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**AN EMPIRE VIEW**  
— OF THE —  
**EMPIRE TANGLE**

(IMPERIAL CONFERENCE, 1921)

BY

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WITH PREFACE BY

RT. HON. W. F. MASSEY, Prime Minister of New Zealand.

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TO THOSE WHO FOUGHT  
FOR AND WITH  
THE EMPIRE

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# PREFACE

BY THE RT. HON. W. F. MASSEY,

*Prime Minister of New Zealand.*

I have had an opportunity of perusing the proof sheets of Mr. Mousley's book, and consider it a valuable contribution to the controversy on a subject which is at present of intense interest and importance to every British citizen, namely, Empire Government.

Mr. Mousley has no axe to grind. He is a New Zealander, who completed his education at Cambridge University, and who has made a study of Constitutional Law, being well qualified, therefore, to deal with the subject which he has taken in hand. There is nothing ambiguous about the opinions expressed in the book; they are direct and to the point, and will be of great assistance in helping to arrive at a proper conception of the position, especially in view of the divergencies of opinion which seem to exist among writers both in the United Kingdom and in the Dominions.

As one who has had the privilege of attending several Imperial Conferences, and also the meetings of the Imperial War Cabinet, I think it is only right to say that the statesmen of the United Kingdom are just as anxious to find a satisfactory solution of the problem of Empire Government as are the representatives of the Dominions. The principle of partnership in a family of nations is recognised and admitted. Concerning this there is no difficulty, neither is there any desire or possibility of interference with an

autonomy of the overseas countries. What is wanted, however, is a clear understanding as between the different portions of the Empire, so that they will be able to take up their duties and responsibilities as well as enjoy their rights and privileges without friction in the future when changing conditions may bring difficulties in their train. That end may not be reached just yet, but Mr. Mousley's book will help to elucidate what at present may appear to be a complicated problem.

(Signed) W. F. MASSEY.

LONDON,

*17th June, 1921.*

## FOREWORD

The problem of the status of our Dominions and of our Empire itself is regarded from different standpoints and appears differently from each. But its full appreciation requires a consideration of them all. Diverse opinions each based on a limited and special aspect of the question are offered as a solution to the problem as a whole and as such circulate around the Empire. Of these the most insistent gains ground. Nevertheless we cannot solve the problem unless we first focus it to see it as it is. To contribute to that end is the purpose of these few and unrevised pages which I have been persuaded to publish while the Conference is sitting. The extracts are chiefly from my collection of Press cuttings, and their absolute accuracy is therefore not guaranteed.

Once we have focused the issue and rendered it possible for us all to look at the same thing we should insure that the Empire sees it. There is great need of publicity, for as yet the Empire has not realised its problem. This has resulted in groundless fears and prescriptive propaganda.

If Great Britain has lagged behind in knowledge of her Dominions' growth, it is equally true that her chief anxiety is to find a way of granting their desires—when once their voices have become articulate. The fresh outlook of these robust young nations has enriched and widened the political horizon of the Motherland, just as her mature consideration and conservative policy have undoubtedly strengthened and straightened Dominion vision. Her apparent reluctance and procrastination to precipitate changes have often proceeded from a sincere and cautious desire, prompted by experience, to wait until "the evidence is all in" before making a far-reaching decision. Only this week a prominent Dominion representative, the author of *The*

*Imperial Conference of 1911 from Within*, who at that time pressed for federation, has publicly "recanted" and generously admitted himself to be wrong. Another ardent and assiduous writer, Mr. Duncan Hall, is inclined to represent as a Dominion's view what is, in fact, a selected view of a section only and proceeds without adequate consideration of International Law without which no outlook of the Dominions or of the Empire can be complete. A thing must either be or not be.

Speaking as a New Zealander after some years of residence here and on the Continent and some little experience of the difficulties of translating theory into actually working official machinery, I realise the depth and complexity of the problem before us which so directly concerns every citizen of the Empire. The burden of this task has been undertaken and must be shouldered by the British Democracies. To them I humbly commend for consideration these few pages.

In the modest effort to clarify thought I owe much to the kindness and encouragement of the late Earl Grey, whose sincerity and purity of vision one cannot forget. I have on occasion been privileged to discuss the angle of view with many people, including Lord Milner, whose speeches I have closely studied, Sir Charles Lucas, and others. But I wish it to be understood that the opinions, conclusions and imperfections are my own.

To Mr. Massey I am more grateful than I can say. His sober, far-seeing and practical statesmanship has, I am proud to believe, enhanced the reputation of my own country for a helpful contribution to the Empire problem.

E. O. MOUSLEY.

Oxford and Cambridge Club,  
Pall Mall, *June 20th, 1921.*

## CHAPTER I.

### EMPIRE POINTS OF VIEW.

WE are now on the eve of the Conference of Dominion Prime Ministers. Its programme includes the arranging, subject to ratification by Dominion Parliaments, of the preliminaries for the Constitutional Conference to be held later. On that Constitutional Conference will depend the structure of our Empire. The statesmen now assembling bring with them arguments specially weighted with experience and knowledge of local affairs. There is, as the following extracts will show, some difference in their points of view, each being determined by local factors such as geographical position or immediate history. To a degree each is right, but between us all there must be at least one common standpoint. It is important to find it. On it depends the possibility of our retaining a great and wonderful power, a power compatible with all the freedom and independence our self-governing Dominions can want, a power the significance of which through habitual enjoyment we have not always appreciated—the power of the unity of Empire.

\* \* \*

A perusal of Extracts from expressions of public opinion in the Dominions on this very difficult problem of Empire shows some difference in the Dominion points of view, some conflict, more apparent however than real, in their

aims, and a certain amount of contradiction in the desire of anyone.

Nevertheless, there is what one may call an Overseas' point of view, common to them all.

Their wonderful growth, as illustrated by the great part they played in the world war, has given to the Dominions a fuller consciousness of their right to nationhood. They have been informed that they have become complete Sister States in the Family of Nations. Such added status must involve some assumption of responsibilities as well as of privileges. But as well as the realisation of these, the Dominions wish to retain their independence unimpaired and the flexibility of the constitution. This brings us to a problem of practical government which is realised less by the Dominions than by Great Britain, who has to guard the International position of the Empire and pay for Statehood. It is the problem of finding machinery that, while giving effect to the wishes of the Dominions, will run smoothly as a part of the engine of the State (including as it does India and the Dependencies), and so function nationally and internationally.

\* \* \*

### **Reasons for Special Points of View.**

(1) In South Africa the Nationalist movement sees in the League a possibility of absolute autonomy. The recent election on the issue of secession decided overwhelmingly for Empire, but the heterogeneous races and the Boer War still bias the politics of South Africa.

(2) Australia is herself a Commonwealth and strongly conscious of growing individuality. She has and would retain great purity of race. In size the equal of Europe,

with a population less than London, she fears the covetous Asiatic millions over the sea and plumps for a Monroe doctrine in the Pacific. It is to be noted she cannot defend herself or afford to pay for her defence.

(3) New Zealand is alone in the Ocean. In size, features, climate, and, therefore, habits of her people, this country bears close resemblance to the Motherland. She has practically no separatist theories, and turns simply and trustingly to England. She is decisive on the white question and necessarily strong on Imperial Defence.

(4) The policy of Canada is influenced by her geographical position, as is South Africa's from her history. She is less assailable than Australasia. She is, to a degree, sheltered by the Monroe doctrine. The brunt of solving the Japanese question must fall on the U.S.A. More than the other Dominions she is independent of Imperial support. On the line taken by Canada, the oldest, nearest and greatest of our Dominions, with her interesting duality of race, a good deal of this problem must depend.

\* \* \*

#### Extracts from Empire Opinion.

(1) "We have," said General Smuts in the Union House, S. Africa (*September 10th, 1919*), in the course of a speech, "received a position of absolute equality and freedom, not only among the other States of the Empire, but among other nations of the world. . . . In future the Dominions would in foreign affairs deal through their own representatives."

(2) Mr. Hughes referred to the struggle made by the Dominion Premiers for separate representation in the

Peace Conference, and emphasised that "by this recognition Australia became a nation and entered into the Family of Nations on a footing of equality." (*Aus. Hansard, September 10th, 1919, quoted Br. Comm. of Nations, 227.*)

(3) *Times'* correspondent (*January 4th, 1921*): "Many Canadians criticised the statement of Colonel Amery, who questioned the moral right of the Dominions to secede and who declared the Empire is one and must remain so. The *Regina Leader* declared that this was a new and dangerous doctrine, and asserted that the moment Imperial Unity became a consideration more important than the maintenance of liberty and democracy throughout the Empire, its foundation will have been withdrawn." The *Manitoba Free Press* quoted Mr. Lloyd George and Mr. Bonar Law as conceding full power of sovereignty to the Dominions.

(4) *Morning Post* (*July 10th, 1919*). Lord Milner said: "From his point of view the only possibility of the continuance of the British Empire was on the basis of absolute out and out and equal partnership between the United Kingdom and the Dominions." He said that "without any kind of reservation or limitation whatever."

(5) Sir Robert Borden, quoted in the article *The New Empire* (*Times, September 22nd, 1919*), at the Imperial War Conference last year, said: "That so far as the Governor-General is concerned, although he is an Imperial Officer in Canada he regards his relation to the Government of Canada as of precisely the same character as the relation of the King to the Government of the United Kingdom."

(6) *Toronto Globe* (*December 1st, 1920*), objects to any Imperial Council for foreign affairs, because a majority



vote would bind the minority. The *Globe* contends that Canada is now free to determine the measure of aid she should give to the Mother Country in time of war and free to withhold aid in the unlikely contingency that Canada should desire to be neutral in the conflict and urges that freedom should not be restricted.

(7) *Toronto Mail and Empire* (*Times*, December 2nd, 1920): "Through unavoidable causes," General Smuts added, "Great Britain on being suddenly thrown into the late war was unable to consult the Dominions. She went in on the faith that they would not fail her and trusted to their coming to her aid. But I do not think that it can happen again. The self-governing Dominions must in future exercise the right to say whether, after full deliberation, they will join in a war in which any part of the Empire may be engaged. The Empire has become a Commonwealth of Nations, each supreme within its borders, with full right to be consulted not only on great questions of international and foreign affairs, but also about the great issue of peace and war."

(8) Mr. Massey, Prime Minister of New Zealand (Speech, March 6th, 1917): "That this meeting of British citizens from all parts of the British Empire, declares unanimously that the British Empire is and must remain one and indivisible, bound by kinship, blood and trade, not a federacy of States, but of nations. . . . A local Parliament for local affairs and an Imperial Parliament (Executive?) for Imperial affairs."

(9) *Times* (December 2nd, 1920): General Smuts stated that the idea of an Imperial Cabinet with legislative or administrative functions was untenable, and he strongly

favoured the idea of a yearly conference of Prime Ministers of the self-governing Dominions with the British Government in London.

*Pall Mall Gazette* (May 3rd, 1920): With reference to the proposal of a responsible Minister for Australian permanent representation in London, a correspondent claimed to be an Australian "in close touch with Australian current opinion, which is irrevocably opposed to Empire Governments or Empire Parliaments." He says that the fact that Australia is distant from England so many thousands of miles is quite incompatible with effective control by Australian Parliaments over Ministers in London.

(10) *Morning Post* (March 18th, 1921): In the House of Representatives, Mr. Massey suggested the establishment of an Imperial Executive, on which the Prime Ministers and other representatives of great Dominions would sit, and which would control the foreign policy of the Empire. Meeting would be not less frequently than every two years. It would be the business of the Conference to deal with foreign affairs, making of treaties, declaration of war, and conclusion of peace, and the Conference would be responsible to the Imperial Government and Parliament of the Dominions.

(11) Sir James Allen, High Commissioner for New Zealand (*Times*, March 30th, 1921), says: "It has never been contemplated that the question of political union with the United Kingdom should be raised, or a scheme of Imperial Federation. This matter has been discussed at former Conferences and found incapable of realisation. It was obvious that no scheme of Imperial taxation would for a moment be acceptable to any of the Colonies or Dominions

for either defensive or administrative or commercial purposes. As far as New Zealand was concerned, Parliament had provided legislation dealing with naval defence, under which, should another emergency arise, New Zealand would immediately transfer any naval forces of which she might be possessed to the Central Council of Empire."

(12) **Mr. Hughes** (*Times*, June 17th, 1918) : " The whole status of the Dominions has been re-established on a new basis, so that the Imperial Government is leader of a number of equal Governments and Great Britain is the leader among a number of equal States."

**Lord Milner** (*April 17th*, 1920) : " The Empire tended to be more and more a group of nations, each developing on its own lines. We aim at Unity of Empire."

(13) *Evening Standard*. **General Smuts** : " British people must realise this great constitutional fact. There must be complete equality and freedom enjoyed by the sister States, united by the King. Only on that foundation will the British Commonwealth last in the future."

(14) **Speech of Mr. Lloyd George** : " Defence of the Empire should be a matter of Imperial concern. It is too much to expect the small British Islands to undertake the defence of the gigantic Empire on Sea." This practical speech of our Prime Minister produces the following from the *Times'* Sydney correspondent, who says : " The dreamy Imperialists of the Commonwealth interpret from this that the representatives of the Dominions at the Imperial Conference will be led into a discussion of closer Imperial relations." He says : " The weight of public support in Australia for any scheme which contemplates, even remotely,

a political union with the United Kingdom, is almost negligible." (*Times*, March 28th, 1921.)

(15) Sir Robert Borden, in the Canadian Parliament (*September 2nd*, 1919), referring to the sacrifices of Canada in the war : "The same indomitable spirit which made her capable of that effort and sacrifice made her equally incapable of accepting at the Peace Conference, in the League of Nations or elsewhere, a status inferior to that accorded to nations less advanced in development, less amply endowed with wealth, resources and population, no more complete in sovereignty and far less conspicuous in their sacrifice."

(16) The *Montreal Gazette* (*January 18th*, 1919) says : "The British Dominions will share directly in the peace deliberations through their own statesmen sitting as members of the Peace Conference. They are not there by favour or courtesy, but by right, established in their readiness and ability to play a great part in the long struggle which has now ended victoriously. The status which they achieved in the war is recognised by the Great Powers. From that status there can be no going back as long as the Dominions maintain the high spirit of courage and confidence through which it was gained. It is a status which involves obligations and responsibilities, but these are not of a nature which the Dominions are either unable or unwilling to discharge."

(17) *Toronto Mail and Empire* : "The political organisation of each of the States of the Empire is now complete. What is needed is political organisation of the Empire itself. With a common will to hold together, the States of Empire who have a common instrument of Government through which to give effect to every impulse of thought, will make for more perfect co-operation. There are numerous matters

of concern to the Empire that are now neglected ; because they belong to ' no man's land.' " (*Quoted Times, January 3rd, 1921.*)

(18) *Toronto World (Times, January 3rd, 1921)* : " Our people are practically unanimous in desiring Canada to remain an autonomous nation within the British Empire. They know they can have any measure of freedom they please, and their sacrifice during the war sufficiently tests their devotion to King and Empire. They are demanding nothing and only wish to be left alone."

(19) Lord Milner (Colonial Secretary), in reply to Lord Charnwood's question as to what steps were being taken by the Government to perfect the mechanism for continuous consultation about Imperial and Foreign affairs between the various parts of the Empire, said in Parliament that we now frankly accepted the position that **the self-governing Dominions were partner nations of equal status with the United Kingdom.** It was of supreme importance that in the Councils of the world the Empire should speak with a single voice. If that was to be accomplished under present constitutional conditions, it could only be because the self-governing nations were agreed upon a common policy. There was no power to impose the will of the majority upon a dissentient. Fortunately, in the great test of the War, all were continuously agreed, but it would be too sanguine to assume that they could always count upon equal good fortune ; they must frankly recognise that circumstances might arise in which, even in a great international crisis, the action of the Empire might be paralysed, or weakened owing to the fact that all parts of the Empire were not agreed. That would be a disaster which was only likely to arise if we lost during peace the close touch with one another which

was established during the War. What he feared was that a clash might occur through one member of the family—naturally the United Kingdom—taking action in foreign affairs which the Dominions would not support because they had not been informed of the circumstances leading up to the decision ; **therefore it was of vital importance that all parts of the Empire should have continuous knowledge of a policy which any one member was pursuing in matters of foreign policy.** His experience at the Colonial Office had convinced him that something more was necessary than existed at present if the splendid harmony that existed during the War was not to be frittered away in peace.

We would be able to hold together on all matters of world importance only if we kept more closely in touch than was possible by means of the Imperial Conference. Statesmen at home and in the Dominions were alive to the necessity of some more permanent organisation, in order to ensure that the whole strength of the Empire should be thrown into the scale in common action. He looked forward with great hope to the meeting of the Conference next year, and he hoped it would not separate without having provided the British Empire with some organ of Government, based upon the recognition of the complete independence and equality of all its different parts, which would enable them to act promptly and effectively when they were all agreed, and to exercise in peace, at least to some extent, the beneficent and harmonious co-operation which was so brilliantly illustrated in the War. (*Daily Telegraph*, June 18th, 1920.)

(20) *The Times'* correspondent, Melbourne (*Times*, March 28th, 1921): "The overwhelming preponderance

of Australians will not consent to surrender, whether by incorporation or otherwise, any part of their constitutional freedom for the purpose of securing a better scheme of Imperial unity, nor will they accede to it on the plea of necessity for defence. Australia is prepared to look after its own defence and to recognise that when the Empire is in danger, it, too, is in danger." (Australia is not prepared to look after her own defence.)

"The Sydney Australian Workers' Union expresses disapproval of Imperial federation, fearing it may involve Australia in an entanglement to which she has not consented." (*Daily Telegraph*, February 17th, 1921.)

(21) *Times* (April 29th, 1921): Mr. Mackenzie King, Liberal Leader, moved an amendment, declaring that "while this House recognises the right of Canada to be represented at any Imperial Conference of Prime Ministers in London, it desires to express its opinion that no steps should be taken involving any change in relations between Canada and other parts of the Empire, and that no action should be taken involving Canada in new expense for Naval or Military Defence."

\* \* \*

Some of these doctrines, if literally true, would pronounce the death knell of the Empire as a State and International entity. They are not. Nevertheless, they are often represented by enthusiastic theorists as reflecting the unanimous desire of the Dominions. They contain technicalities misused and involve violent changes not intended. They include irresponsible statements of the Press and sometimes party propaganda, often excited by some startling but innocent move in England, e.g., Mr. Churchill's "Regular Imperial Cabinet" (*Times*, April

26th, 1921). But a referendum would decide unmistakably for Empire, as did the recent election on the straight-out secession issue in South Africa. All shades of opinion wish to retain the Unity of Empire. Given this, the amount of desired independence varies. And the political pendulum is swinging. Let us quote from this week's Press news from Canada :—

(1) The *Montreal Gazette* observes "that this year's Conference of Premiers will not afford a proper opportunity for dealing with revolutionary or evolutionary projects for the erection of new mechanisms for the Government of the Empire. It hopes that, when the Constitutional Conference is held later on, it will be made up of **careful and conservative-minded men who will 'not be carried off their feet by exploiters of theory, or men with a self-elected mission to change.'**"

The *Gazette* "emphasises the sacrifices made by the Dominions during the War, and adds that the conditions which led them to such sacrifices for the common sentiment of the British peoples should be touched with delicacy and changed after long and earnest thought."

The *Winnipeg Free Press* objects to the characterisation of the Conference of Premiers by Mr. Winston Churchill as an Imperial Cabinet. It says that the *Times* expects the June Conference to make decisions on matters of common Imperial interest, and while it admits that any decision so reached must be subject to regulation by the Dominion Parliaments, it "sees no reason to doubt that **recommendations by the representative Premiers would become Cabinet policy in their countries, and therefore would normally carry the approval of their Parliaments.**"



It protests against Mr. Churchill's "rash and presumptuous attempts to bring before the Imperial meeting this year business that does not belong there, and to vest in such a gathering powers that could only be exercised by the sacrifice by the Dominions not only of the new interests they have acquired by the War, but even much of the self-governing privileges they formerly enjoyed."

(2) The *Toronto Mail and Empire* declares "that there is no mysticism or cant in Mr. Meighen's Imperialism," and adds "that the Canadian opponents of those who are planning for co-operation between the countries of the Empire deal largely in clap-trap" . . . "they keep on warning our Government to beware of projects of closer union, of suggestions for understanding in regard to matters of common concern to the Empire, of surrendering one iota of Canada's autonomy, and so forth. **They do all this in utter disregard of the fact that nobody proposes any fettering of Canada,** and least of all is the Mother Country, from whom Canada obtained her free agency, contriving to reduce the Dominion to its former state of a dependency. Canada is an independent nation within the Empire because she is one of Britain's offspring; it is part of her heritage to be free, daughter as she is of the nation which has always been foremost in the cause of human liberty."

The *Mail* further asks "why it is that the very idea of any organisation or agreement for purposes of co-operation among the nations of the Empire is forbidden by some people in this country. They have often expressed their fears and opposition, but have never given anything resembling a reason for them. The same people are ready to enter into a reciprocity agreement with the United

States and are not fretting about the Joint Waterways Commission between that country and Canada. Why do they wax raucous at the very thought of systematising of the relations between Canada and other parts of the Empire to which she belongs? They do not deny the existence of those relations."

(3) The *Globe* declares: "Whatever may be our voice in Empire affairs, these cannot possibly be as familiar to us as to the people of Britain." It says that Canadian statesmen occupied with the task of developing and governing a Continent cannot be expected to keep as close a watch on the tangled skein of European politics as those in the Old Land. It thinks, therefore, that Canada should moderate its expectations as to the part it can play on the world stage. The *Globe* continues: "Our greatest work, after all, lies at home, where we have a territory about as large as Europe, with a population little more than that of Belgium. Our foreign relations are mainly with the United States, and it is quite in **accord with the conditions of our situation that we should have a representative at Washington and at no other foreign capital.**"

(4) "In the Dominion House of Commons, Mr. Charles Murphy, formerly Secretary of State in the Laurier Cabinet, drew attention to a report in the Government Press of a speech in which Mr. Churchill declared that the coming Conference in London was not a temporary affair, but a meeting of the 'Imperial Cabinet,' and asked the Premier to explain the difference between his own and Mr. Churchill's definition of the character and scope of the gathering. Mr. Meighen replied that the term Imperial Cabinet appeared

wrong, as the coming Conference was something quite different and merely a conference of Premiers."

(5) The *Canadian Gazette* says: "Sir Robert Borden's statement that the status of nationhood entailed responsibilities which could not be disregarded leads directly to a conclusion other than that which was apparently in his mind. So long as Canada is unable, as she is at present unable, to undertake the responsibilities of nationhood, what is the use of talking of a new status? Canada played a great part in the Great War, but constitutionally she is exactly where she was before, and where she is likely to remain. Until she is prepared and willing to alter that status by one very grave step, which alone can effect the change, and until she is sufficiently strong in population and the developments of her latent wealth to take that step, the less said about the nationhood the better it will be."

The *Quebec Chronicle* "declares that it yields to no one in its regard for Canadian autonomy, but thinks we should make sure whither we are going and if we are prepared to defend our independence, and if we desire our independence."

The *Times* correspondent, Toronto, May 13th, 1921, referring to the pending election, says: "While this is the position of the Unionists, opponents of the Government insist that Canada cannot speak authoritatively upon the common problems of the Empire until after a General Election and a definite decision by the people to what party or groups the government of the country shall be committed. The extreme autonomists are also busy in an endeavour to create the impression that the Imperialists are conspiring to effect an organic federation of the Empire and to centralise authority in London. One object of this element is to excite

dormant nationalist feeling in Quebec and prevent any political movement towards Mr. Meighen in the French province.

“Altogether, the situation is unfavourable for an aggressive leadership by Canada at the Conference, but it is certain that the Canadian Premier is as devoted to the Empire as any of his predecessors, and that there never was a time when the masses in Canada would show themselves more loyal to the Throne and the Imperial connection if the necessity for an actual expression of the sentiment of the country should arise. . . .

“No doubt the volume of Press opinion is favourable to the appointment of a Canadian Ambassador in Washington, but there is no evidence that the people as a whole have thought deeply on the subject or considered the implications of separate diplomatic representation of the Dominions at foreign capitals, or the possibility of conflict between Great Britain and the Dominions in the Assembly of Nations.

“The extreme autonomists have been leading opinion, and other elements are voiceless or uninterested. There is no ground, however, for apprehension, and it is certain that Mr. Meighen will support all reasonable and practicable demands for continuous co-operation between the Dominions and the Mother Country in all that vitally concerns the unity and security of Empire as a whole.”

Here then as at Home the pendulum is perpetually swinging. There is always the possibility that what to-day one party advocates, to-morrow another party may reject.

And as the expression of political opinion in the Dominions from time to time is relative, so this problem of Empire is itself a fluid one. New factors keep emerging, old reasons disappear.

## CHAPTER II.

### THESE DOCTRINES TESTED—NATIONALLY AND INTERNATIONALLY.

#### THE LAW OF THE CONSTITUTION.

NEVERTHELESS some of these statements would seem to claim International Statehood for the Dominions. Let us see what this involves—what are the attributes of Statehood as recognised internationally and with which International Law has to deal ?

A State, according to my friend and former professor, Sir John Salmond, one of the greatest living jurists, is a human society organised for the purpose of the administration of justice, the second function of the State being War. This includes both independent and dependent States, the difference being that the latter do, and the former do not, form part of a larger State. Salmond is careful to show that these Dependent States have the internal powers, but not external powers of Independent States. International law takes account of Independent or Sovereign States. It cannot take cognisance of States that are parts of a larger State. While the Dominions form part of the British Empire State, they are not Independent States, nor can they assume the powers and responsibilities of Independent States.

That brilliant jurist, Mr. Pitt Cobbett (Sydney University) defines a State "as a people permanently occupying a fixed territory, bound together into one body politic, and by common subjection to some definite authority exercising through the medium of an organised Government a control over all persons and things in its territory, and, above all, capable of maintaining relations of peace and war with other communities."

We note that this faculty of making war and peace is a necessary connotation of full Statehood. Are our Dominions considered as having, separately and unrestricted, this function of making war and peace, or not? So far from this, they admittedly do not accept responsibility for their own defence. What they can and should have is a voice in Foreign policy, including War and Peace, and Defence.

\* \* \*

Now for this Supreme Power in the State, which makes war and administers justice, what is it? It is none other than the Sovereign—an actuality—the combination of forces which from time to time amounts to the supreme power of the State. It is because the centre of political gravity varies that it is necessary that some definite and available body or bodies should exist for the direct expression and carrying out of the will of the Supreme Power. These are the organs of the Sovereign. They include the Legislature, the Executive, the Judicature, and so on; and we locate them in Parliament, the Cabinet, the Courts, His Majesty's Army and Navy, etc.

The rules regulating the functions and powers of these organs of the State and their relations one to another are found in what is called Constitutional Law.

**Law of the Constitution.**

The Law of the Constitution is not merely the written Law of the Constitution but the written Law as amended or superseded by Constitutional practice. (For our important explanation of this, see Appendix B.) But this *practice* must stop short of conflict and contradiction, nor can it encroach on the domain of Foreign States or offend International Law.

The question as to what is the ordinary Law of the land (written law as supplemented by custom, *e.g.*, Trade usage), is decided by the Courts. But in the case of the Law of the Constitution (the written law of the Constitution as amended or superseded by Constitutional *practice*) there is no single body to decide. Each Government in the Empire interprets for itself and follows by executive action its interpretation of this amendment of the written law by Constitutional practice and precedent. There are then the several interpretations by the United Kingdom, by the several Dominions, and by the League of Nations. The result is The Tangle.

This difficulty is one of degree only. It can be minimised by incorporating from time to time into the written law (easily ascertainable) the amendments effected by constitutional practice.

This really is what Lord Sandon may have meant when he said that certain powers exercised by the Dominions—by the “Good-will of the Home Authorities”—have no value until exercised by the Dominions “as by right,” and what Sir John Findlay meant when he wrote in 1911 “the present forms and theories of Imperial Government are an anachronism. They no longer correspond to, but contradict, the new régime.”

**Remedy :**

To untie The Tangle then it is necessary :

(1) To embody in the written law of the Constitution those amendments effected by Constitutional practice.

(2) To embody in the written law of the Constitution so far as is thought desirable such further powers as it is intended the Dominions shall now exercise.

The question is—has the written Constitutional law on any single matter been superseded by Constitutional practice or not ? If so, to what extent ?

For Constitutional practice either has superseded or not superseded the written law of the Constitution. We may not leave it ambiguous and call it an anomaly. It is more. It must be one of two things.

Thus, Sir James Allen (*Manchester Guardian*, 5th May, 1921) says :—

“ It will be generally conceded that the Dominions have become autonomous nations with the fullest freedom, the one binding link being the Crown,” and in another place he writes: “ As a result of the Peace Treaty they (the Dominions) (are autonomous States under the one Government. Of course, it is an anomaly.”

But if the Dominions have become “ autonomous nations with the fullest freedom ” they cannot be bound to the Crown by any link. Their only relation can be that of Alliance. Likewise, if they are autonomous States and under one Government, this is more than an anomaly. It is a contradiction.



## CHAPTER III.

### POSITION OF THE DOMINIONS IN 1914: AND AFTER.

(INTERNAL POWERS. DEFENCE AND FOREIGN POLICY.  
THE LEAGUE.)

AT the outbreak of the War the Empire was an Imperial State, the Government of the United Kingdom being legally and constitutionally the Government of the Empire. The Legislative organ of the Sovereign of the Empire was the King and Parliament of the United Kingdom, just as the Executive organ was the King with his Council of Ministers of the Parliament of the United Kingdom. But the King's power being nominal only, he has to accept the advice of these Ministers.

As a matter of Constitutional practice, therefore, the legislative organ was the Parliament of the United Kingdom and the executive organ was the Cabinet as a committee of the Parliament of the United Kingdom.

By their Constitution each self-governing Dominion was given power to make laws, but this power is limited to the terms of the Constitution, and it has no extra-territorial jurisdiction. It could make treaties with other Dominions but not outside the Empire. The Parliament of the United Kingdom still preserves the right to make an act binding in the Dominions and no Dominion legislation conflicting with this could be valid. The assent of the Governors of the Dominions to legislation is necessary before it becomes law,

and it must also be submitted to the Crown, *i.e.*, practically to the British Cabinet, by whom it may be disallowed. In this way the Parliament of the United Kingdom is the legislative organ and the British Cabinet the executive organ, of the Empire. Australia, New Zealand and South Africa have power to amend their own Constitutions, and Canada's can be amended by joint petition of both Canadian Houses to the Parliament of the United Kingdom.

But the Constitutional law of the Empire as thus set out has been considerably amended in practice. The right of the Dominions to control their immigration and tariff has been recognised. They have been enabled to make commercial agreements with the Motherland and with one another, and on two occasions were conceded equal representation with Great Britain in International Conferences (Radio-telegraphy and Safety of Life at Sea). To a degree they have in effect legislated extra-territorially, *e.g.*, requiring their citizens to fight overseas, and providing for administration of land and sea forces abroad. But notwithstanding this and the recent proposal in the Canadian Parliament to amend the North America Act by a declaration of extra-territorial operation for Canadian legislation, the case of Attorney-General *v.* McLeod still holds as limiting the jurisdiction of the Dominions territorially. Excepting this, and the right of final appeal from Dominion Courts to the Privy Council, foreign policy, war and peace, and defence, the Dominions as a matter of fact were practically independent notwithstanding the fact that the legislative and executive organs of the Sovereign of the British Empire were then located in the Parliament of the United Kingdom.

That was the position in 1914 and, until an amendment

of the Constitution, either by Constitutional Declaration or consolidation in Constitutional practice, still is.

Since the commencement of the War, however, it has been claimed that the Dominion Ministers have an equal right with his Majesty's Ministers in the United Kingdom to advise the King. Thus, the appointment of the Canadian Ambassador at Washington was announced by Mr. Bonar Law (May 10th, 1920) as being made by "His Majesty on the advice of his Canadian Ministers." At the Peace Conference, Canada insisted, and it was recognised, that in matters embracing the whole Empire the King certainly ought to act only at the instance of all his Constitutional advisers, the Dominion Ministries as well as that of the United Kingdom. The doctrine has even been developed as claiming that, with reference to affairs concerning any particular Dominion, His Majesty's Ministers of that Dominion alone should have the right to advise the King. Moreover, in matters that concern all the Empire, General Smuts claimed that so far as his Dominion Parliament was concerned, it could not be bound by a majority vote of the Dominions.

Let us suppose that the King was advised by his Ministers of the Parliament of the United Kingdom, *i.e.*, the British Cabinet, to declare war, while his Ministers of the South African Parliament advised him not to go to war. The advice of the British Cabinet would have to be followed, and the Empire, including South Africa, would be at war. As a matter of fact, that is the legal, constitutional and actual position at present.

When we talk of the "Unity of the British Crown" or "the throne that unites the Empire" we must remember that the King personifies, and is the symbol of, the Sovereign

of the Empire. He reflects, and in other words, he is, the will and command of the British Cabinet. To relate the Ministers of Parliament overseas to the King, therefore, can only be at present to relate them to the British Cabinet.

If these and similar constitutional claims of the Dominions are admitted, they should be embodied into a Constitutional Declaration. To the question of a Dominion's advice being exclusive in its own matters, or bound by the majority in Empire matters, we shall return later.

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#### **Defence and Foreign Policy.**

Let us revert to the question of defence, and take, for example, Australia. To assist the Motherland in payment of defence, contributions which had been made before were continued by the Commonwealth after its formation. Being self-governing, Australia wanted some voice in the administration of this money. Her people wanted to possess a fleet administered by and responsible to Australia. This was granted. They still, however, have no voice in foreign policy which might declare war in which these ships would be used as belonging to a part of the British Empire State. Payment for these ships and for other defence amounts to taxation. "There can be no taxation without representation." Conversely, if representation (in foreign policy, etc.) then taxation. The Dominions, having, as we have said, a voice in foreign policy, will accept this truism that common defence is a first charge on the resources, not of the British Isles alone as before the war, but on the Empire. The principle is all we need bother about here. How to carry it out is a matter for agreement. Many factors such as difficulties in the life of the Dominions, the percentage of

impecuniary native races, etc., would have to be considered. And it is at least certain that the British taxpayer is no longer willing or able to carry the weight of the Empire debt. He has done it for long, and with him the pressure of life and competition, his hours and conditions of work, are nowhere so favourable as in the Dominions. The matter, then, we may consider settled if we can prescribe for the right of the Dominions to representation in foreign policy.

This issue was introduced by Sir Joseph Ward at the Conference in 1911. Mr. Asquith, who was unsympathetic and dogmatic, cleverly pinned Sir Joseph Ward down by asking if the Imperial Parliament (of Great Britain) was to surrender its responsibility for foreign policy or to divide it—each being obviously fatal. Sir Joseph's answer should have been "Neither!—we want the right to contribute towards it—the principle that America fought for—no taxation without representation."

This still has to be rectified. The brilliant author of "The Problem of the Commonwealth" is hardly correct in saying that "the Dominions were committed to war by a Government responsible only to the people of the British Isles," for in 1914 the British Government still represented the Empire. The point is that the decision was taken (necessarily, as it happened) without any direct consultation of the Dominions, as also was the signing of the Armistice on the Fourteen Points, and that, moreover, there was no continuous machinery by which the Dominions *could* have been consulted. The Dominions desire to contribute to the Empire decision of war and peace and foreign policy if they are to contribute to defence. This is recognised universally.

**The League.**

Canada, pressed on by Borden, led the Dominions to insist on direct representation on the League. Separately they signed the Covenant as individual nations. Previous to this international responsibility had been accepted by the Empire as one State. Now for the first time the Dominions pledged themselves to accept it. At the time they did not understand this. They believed they were gathering rights and privileges. They overlooked their obligations.

What, then, is this wonderful thing they have got at such a price—that America has refused even with reservations, but which Canada, divided from America only by a fence, jumped at without any reservation at all? It is almost solely responsibility. A word on how the Dominions came to encompass this.

The Imperial War Cabinet was an executive body for purposes of War, and at that time the only Cabinet for Great Britain. It comprised, with members of the British Cabinet, Ministers representing the Overseas Dominions as such, who, nevertheless, for all the word "Cabinet" may seem to be, retained intact their responsibility to their respective Dominion Parliaments. During the War definite promises were given to consult the Dominions as to terms of peace. The Dominions had nothing to do with signing the Armistice on the Fourteen Points.

Then came the Peace Conference, and the Dominions were represented as Members of the British Empire Delegation. They spoke singly and individually in detachments of Empire. This was the result of wanting separate voices. For this they gave up the thing for which they had fought—

Unity of Empire. As the Dominions were counsel for their own case, so the case of the Empire was not put at all. Things happened. The Constitutional machinery of the Empire was forgotten. Moreover, the Dominions had no relationship to other Dominions, but each was related direct to foreign States. This removed the responsibility from the British Prime Minister for piloting their case through. Then they duly signed the Peace Treaty as (so one is informed) His Majesty's Ministers Overseas, from which it is claimed they have signed Peace as separate autonomous States. The Dominions then insisted on becoming members of the League of Nations, and separately signed the Covenant.

## CHAPTER IV.

### THE TANGLE.

#### **Results of the Dominions becoming members of the League as it now stands.**

(1) By obtaining as independent States direct relations with Foreign States, the Dominions as a logical result parted with unity of Empire. Unity is strength.

(2) It is no answer to this to say that the votes of the Dominions and the United Kingdom were unanimous. They signed either separately, or else altogether as constituent parts of the British Empire, which, in the latter case, had a block vote of six. America naturally objected, while the principle is one State one vote. If the Empire as a State is to have six votes, then we must have a collective vote by gradation based on some estimate, *e.g.*, Czecho-Slovakia 1, Italy 2, France 3, America 3, British Empire 6, and so on. Incidentally, this would destroy the notion of the Dominions being separate States.

(3) The Dominions, in any case, accepted the responsibilities of Statehood. This they did *unconditionally*—with not even the reservation on account of the inadequacy of which the United States of America refused the League in order to preserve the conception of sovereignty. On the contrary, the Dominions have omitted to require those



reservations of policy recognition of which they demand within the Empire from the British Government, *e.g.* :—

(1) Monroe doctrine for Australia in the Pacific.

(2) Immigration.

(3) Right of refusal to assist in war or jeopardise their fleet. (*See* extracts from Dominion Opinions.)

In thus separately signing the Peace it is claimed they achieved full Statehood, and obtained each a separate International voice. This they believe they confirmed by becoming separate and individual members of the League and by so doing acquired privileges. As a matter of fact their privileges are for the most part huge responsibilities which the Dominions neither realised nor foresaw. And they parted with much. They did not foresee that, either.

It is a significant fact that those who have insisted most strongly on the complete sovereignty of the Dominions and acceptance by them of international obligations of a far-reaching character have paid the least attention to the results proceeding from such alleged powers in other directions, *i.e.*, in the constitution of the Empire and of the Dominions themselves. Thus the Dominions have pledged themselves to defend, by force of arms if the League requires, Czecho-Slovakia or Poland. In the meantime the Dominions have not yet undertaken the burden of their own defence. And while still subservient to the British Parliament they are put in direct contact with international relationships.

As regards the Dominions, the performance at Paris has been that of trying to make a pyramid stand on its apex. The bestowal of international status on the

Dominions proceeded ahead of and ignored the actual facts of their constitution, and the method followed there has been, first, to concede such international rights and responsibilities to the Dominions, and then by process of backward reasoning to deduce their constitutions. This process is at once against the teaching of history, law and logic. In the meantime the existing constitution stands unamended, and the result is the tangle.

Let us substantiate this.

In his Handbook to the League of Nations,\* Sir Geoffrey Butler refers to the clause of Article I of the Covenant which provides for the admission of any fully self-governing State, Dominion or Colony, if this admission is agreed to by two-thirds of the Assembly, conditionally to its giving effective guarantees of its sincere intention to observe its international obligations and to accept such regulations as may be prescribed by the League in regard to military, naval and air forces and armaments. He points out that "the effective guarantees necessary are not a mere figure of speech."

"It is difficult," says Sir Geoffrey, "to exaggerate the importance of this clause in the Paris scheme. It is arguable that it is its most significant single measure. By it the British Dominions have their independent nationhood established. There may be friction over small matters in giving effect to this internationally acknowledged fact, but the Dominions will always look to the League of Nations Covenant alike as their Declaration of Independence and their Treaty of Versailles. That the change has come silently about and has been welcomed in all quarters through

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\* Introduction by Lord Robert Cecil.

the British Empire is a final vindication of men like the United Empire loyalists."

On the contrary, Sir Geoffrey Butler's view of the covenant as a Declaration of Independence of the Dominions would be neither acceptable nor palatable to the huge majority of opinion in the Dominions. In fact, unless the Covenant is amended it is more likely to be regarded as an entanglement and additional factor embarrassing the problem of Empire. And it has been repeatedly expressed in the Dominions that if it is to be a choice between the League and the Empire, the League must go. The allusion to United Empire loyalists is difficult to understand, as the Covenant has certainly made for disintegration rather than unity of Empire—a fact admitted even by America, who objected to the Empire vote.\*

One must beware of accepting as reflecting the majority point of view of the Dominion itself or of the Empire, the extremists' point of view of any Dominion, *e.g.*, Canada. Nor must we forget that the Mother of the League, the U.S.A., disowned it.

That a body with ideals similar to the League will one day salvage the world I have no doubt, although its influence on immediate history is remote. The League started under a heavy handicap, being weighted with the sanctions and rewards of the Great War. Nor should it have been difficult to foresee that to utilise the fact and occasion of admission to the League as conferring Statehood was not the best method of arriving at a solution of the

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\* "The British Government was not able to command the support of the self-governing Dominions at the Peace Conference on all occasions, and there is still less reason to believe it can succeed in so doing in the League of Nations."—"International Status of Dominions," *Minnesota Law Review*, February, 1920.

gigantic constitutional problems of the British Empire, but merely resulted in ignoring them. The province of the League was to promote harmony among nations. It was not its province to confer Statehood.

The *Melbourne Age* (quoted *Morning Post*, March 27th, 1919), said that "President Wilson had played a dangerous game at the Peace Conference, whose first duty was to wind up the affairs of this war and permit millions of soldiers to return to peaceful industries. President Wilson on the other hand preferred to make peace contingent on the adoption of his academic notions for the regeneration of the world."

Mr. Meriman, the ex-Premier of South Africa, in a speech in the Union House of Assembly (March 24th, 1919) severely criticised the League. "Start your League of Nations and you destroy the British Empire." The ex-Premier "strongly urged that an opportunity should be given of discussing the strong inadvisability of any proposal which would transfer the country's allegiance from Great Britain to a body not yet constituted."

With prophetic vision, the truth of which subsequent facts have verified in an astonishing manner, Bishop Frodsham wrote a letter to the *Post* (April 16th, 1919) which included the following: "All who value the unity of the British Empire, if they realise the issues, would regard with something approaching horror the light-hearted fashion in which the proposed Covenant of the League of Nations is being forced upon the whole British community as a condition of peace. The Covenant assumes that the self-governing Dominions are separate States by themselves, and that they will not only be each capable of dealing with the League Executive as separate political entities, but be

expected to do so at least with reference to mandatory colonies. This introduces a principle of Government which may result in the Empire becoming a sort of loose Britannic League of independent Powers. It will be destructive of united action in all external affairs through the Foreign Office alone as in the past, and of closer union in the future. Another contingency must be faced. Supposing that one Dominion refuses to sign the Covenant or decides at a later date to withdraw from the League upon any issue which the people of that Dominion consider essential for their own welfare? It may arise, for instance, in Australia over the question of compulsory Free Trade in the Pacific Islands or over some development of the Asiatic question which is far bigger than one of immigration. Free Trade with Japan would destroy Australian interests just as surely as the introduction of coolie labour, but this is the point: if Australia rightly or wrongly decided to withdraw from the League rather than resign its sovereign rights, the result would be that one part of the British Commonwealth would be outside the League and the rest of the Empire within. . . . If Mr. Lloyd George, even at the eleventh hour, could get some clause inserted into the Covenant safeguarding all the rights and unity of the British Empire which are quite as vital to our interests as the Monroe doctrine is to America and racial self-respect to Japan, the situation would be robbed of its gravest dangers. Incredible as it may seem, however, some who are now pressing forward what at the best is a political experiment seem to regard the possibility of one Dominion standing out or leaving the League as a minor matter affecting only the interests of the particular Dominion. Such a misconception would be repugnant to the bulk

of the British people if it were placed before them. They would rather the political experiment were abandoned altogether than that there should be the danger that the League of Nations should be built up on the ruins of the British Empire—an Empire which they believe rightly is a great trust that the British are holding for the good of the world.”

Mr. Hughes, the Australian Premier, has declared Australia's unalterable opposition to any form of amendment, however mild, into which could be read a declaration by the League of anything approaching racial equality.

“We cannot,” he says, “agree to the insertion of any words in the Covenant or the Treaty of Peace that would impair or question our sovereign rights in regard to any or every aspect of this question.” Referring to the proposed Japanese addition to the preamble, Mr. Hughes added: “No matter how innocuous it may seem in form, it is certainly aimed at giving the League control of questions relating to immigration and nationalisation and matters which cannot be surrendered by any State without such impairment of its sovereignty as it makes it in effect a subject State.” (*Reuter, March 28th, 1919.*)

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As a matter of fact the Dominions did not realise nor was any opportunity afforded them for the realisation of the responsibilities and changes involved in their admission to the League.

The lesson that has been taught by the whole proceedings of the Peace Conference is the great danger of delegating authority to one man to commit democracy. Not only does this apply to the President of the United States, but to the Empire representatives also. At the best

they gambled on the majority opinion of their Dominions to ratify changes involving responsibilities that not only have not been explained to them, but the meaning of which was not understood by the delegates themselves.

There is little doubt that history will take this view, and to this fact more than any other is due the aversion throughout the Empire and America to delegation *per se*. The rigorous insistence on confirming, before the departure of the Prime Ministers, the agenda of the Conference, illustrates this.

It is not too much to say that it was by no means clear in the minds of either the British Prime Minister or the Prime Ministers of the Dominions themselves what was the real meaning of the autonomy some of them insisted on so much. Even in New Zealand, whose attitude has been most prudent, no explanation was made because none was possible.

On the occasion of the ratification of the Peace Treaty and acceptance of the mandate for Samoa by the Parliament of New Zealand (September 4th, 1919) "the Prime Minister and Sir Joseph Ward explained the general purport of the Treaty to the House, but no reference was made to the grave constitutional considerations that arise from the fact that the self-governing Dominions were represented at the signing of the Treaty. . . . There has been no discussion of the matter by the public of New Zealand, who accept the fact without seeking to interpret it." (*Round Table, December, 1919.*)

*The Evening Post, Wellington, Sept. 1st, 1919,* is then aptly quoted: "Paris may be said to have swallowed the camel while London was still straining at the gnat. . . .

“ Though the Dominions have not acquired a formal and effective share of the Government of the Empire, they have been admitted without challenge and reserve to an individual and independent status in the Council of the Nations. . . . Are the Dominions ever to cast an International vote against the Mother Country on a question relating, say, to the future of the Pacific, regarding which their wishes might rather harmonise with those of the United States? And what would be the value of the support or opposition of the Dominions without the whole force of the Empire behind it? ” (*Quoted Round Table, December, 1919.*)

Mr. Downie Stuart, in debate on Treaty and Mandate in the New Zealand House of Representatives, stated: “ When it comes to a question of carrying out the terms of this Treaty in reference to Samoā or any of the other mandates, we want to know what our position is with foreign Powers if they say to us, ‘ we treat you as a sovereign State. You made peace on your own initiative and by your own act: and we look to you in future whenever a question of internal affairs arises to act as an independent Power, making peace or war on your own instructions.’ One can see at once that it gives rise to an immense change in the British constitution, and it may give rise to greater conflict between different component parts of the Empire.”

In this connection Major Ormesby Gore pointed out in a letter to the *Times* (May 5th, 1921), that the correct handling of mandates by mandatories in the last resort must depend on public opinion. This takes us back to Lord Islington’s point, published a few weeks ago, that the terms of any mandate and question of acceptance should



be thoroughly thrashed out in the Parliament of the mandatory, as this responsibility is not on the League.

In no case has this been done nor have any conclusions been reached in the constitutional dilemma. As a matter of fact the authority wielded by New Zealand over Samoa had to be supported by the (Imperial) Foreign Jurisdiction Act.

It is here that we may notice the wisdom of New Zealand's suggestion that the Dominions should not enter into direct relationship with the League, but should "transmit representation through Britain after consultation." For this purpose Sir James Allen suggested the establishment of a secretariat in London to co-ordinate such representations from the Dominions. "This," adds Mr. Hall (p. 343) "might suit New Zealand, but would be obviously incompatible with the national status of Canada or Australia." Nevertheless, Sir John Salmond's advice appreciated the fact that part of the same State, whether that part be Canada or Great Britain, can only "contribute" to the decision of the Empire. If their status demands a separate voice that could over-ride a decision of the rest of the Empire, then they are separate States.

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Thus it would seem that, while it is claimed the Dominions have recently assumed Statehood, the constitution has not been amended at all. Some amendment compatible with the preservation of the British Empire State is both possible and necessary.

Moreover, since signing their names the Dominions have actually performed practically no function of Statehood. Thus, the Dominions' representatives participated in the

German Peace Treaty and signed it. They have now also signed peace with Austria and Bulgaria without participating in these at all, or for the matter of that, in subsequent decisions as regards Turkey or Germany or Russia. The reason of this is that the British Empire delegation, which was the body participating at the Peace Conference, has since ceased to exist, and with it the personalities of the Dominions as a nation faded back into the air, for the British Empire delegation has no successor.

In the book "The Secrets of a Kuttite" the writer points out how much the peace of the world hangs, even if other gigantic problems are solved, on the policy of the Middle East, where a new centre of political gravity must be ascertained. This point must influence the destinies of India, Egypt, the Pacific, and the problem of Constantinople. The Dominions were not consulted in this. If actually "sister States" of Great Britain, their responsibilities do not stop at immediate responsibilities, but include others more remote. (See Mr. Massey's suggestion for amending Naturalisation Laws.)

In other words, even within the League as well as within the Empire, the Dominions are committed to responsibilities on questions with which not only are they concerned, but in the decision of which they are not consulted, and they have likewise without consultation been committed to responsibilities with countries in which they are not interested at all, *e.g.*, Poland and Czecho-Slovakia.

The constitution has not been correspondingly amended nor can some of these commitments be supported by amendments possible to the constitution.

## CHAPTER V

### THE EMPIRE FROM WITHOUT.

#### U.S.A., THE LEAGUE AND THE EMPIRE : DEDUCTIONS.

THAT this contradictory status of the Dominions concerns not only us but foreign States one has only to read the American or Continental Press to realise.

Relations between one State and another are the largest and most important relations possible in the political world. These relations are governed by international law which includes technical rules of recognition by other States. And if the part the Dominions took in the Peace Treaty and the Covenant amounts to recognition, our Allies and other States expect them to undertake international obligations. A thing cannot both be and not be at the same time. Few foreigners attempt to understand the ways of the British Constitution, but they quickly realise that the present position is not merely anomalous but contradictory, and if Europe were as settled as she was in 1914, a good deal more would be heard of this and the question of the status of the Dominions as independent States or otherwise would have been decided one way or the other at once by the Law Officers of Foreign States. Just because we have won the War and are paramount in the League this subject has been overlooked. But the present position is unsatisfactory to other nations, and as time goes on until it is rectified more insistent will foreign States become.

As the *Minnesota Law Review* says (*February, 1920*): "The truth of the matter is that the Dominions look at the international questions from a colonial rather than an international point of view. They are Nationalists above everything else. If the interests of the various States of the Empire coincide, the Empire acts as a unit, but if on the other hand they conflict, the several Governments feel free to go their own way. . . . The Colonies (Dominions) will appoint their own delegates to the League of Nations and these delegates will be responsible only to their own Governments and Legislature."

It has been said that Mr. Hughes is firstly a Nationalist, secondly an Imperialist; that General Smuts is first an Imperialist and secondly an Autonomist; that Sir Robert Borden has been all three together.

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#### **U.S.A., The League and the Empire.**

When the United States refused to ratify the Covenant of the League, which was largely the creation of her own President, and consequently the Treaty of Peace, to which also by the act of the President the Covenant had been tacked, a good deal of resentment was felt throughout the Empire and the Entente. Thoughtful Americans appreciated this. But a large majority of their countrymen have confirmed this decision as it had been prophesied they would. The world has had to pay for the mistake of their President. It has not improved Anglo-American relations, and high authority in France and in England has pronounced that the action of the United States is "virtually a tearing up of the Treaty to which the U.S. were morally committed."

Nevertheless, early in the proceedings, the clearest possible warning had been given by America that the proposed Covenant would not be acceptable to her people.

The history of subsequent political events in the Empire shows that with the awakening of the Dominions to the meaning of their new responsibility, grave doubts have arisen as to their vague position in the League and in the Empire.

And America can very well retort that if the Covenant of the League with the meaning of all its responsibilities and changes involved had been submitted to the Empire it is by no means certain that the Dominions would have acted differently than she did. Why should they? They have their Monroe Doctrine also, and three of them, with her, adjoin the Pacific.

As a matter of fact the Dominion Prime Ministers, led by Sir Robert Borden, saw in their admission to the League the possibility of getting a certificate of statehood as an honour won by their great efforts in the war. This, in the name of the Empire, the Dominions accepted. But it has been pointed out that to expect them to honour the literal obligations of their signature is impossible and absurd. The Dominions then signed what they cannot perform, and what they do not wish to be able to perform. The United States refused to sign what she would not agree to perform.

Let us, at all costs, understand America's point of view. In a valuable article in the *Fortnightly Review* a well-travelled and prominent American citizen says that the founder of the American Republic, in his farewell message, clearly distinguished between the "extraordinary emergencies in world politics in which the American people

ought to take part," and the "ordinary combinations or collisions of European politics" and that America's entry into the war was not a departure from such policy.

"The American representative at Paris preferred, without any mandate from his countrymen, to intervene in questions like Fiume, Saar Basin, Danzig and Thrace, and has done so at a great sacrifice of America's good relations with former friends. . . . That this action will cause deep disappointment, and even greater irritation in Europe, is recognised with regret by all thoughtful Americans, and it is important that it shall not be misinterpreted."

In an article in the *North American Review* (July, 1919) this writer predicted "that the proposed League without drastic reservation would not secure the consent of the requisite two-thirds, or even a majority of the Senate . . . and that the controversy in the United States over the question of acceptance or rejection was slowly widening the Anglo-American *Entente*. Time and the event have verified this prediction."

The writer admits "that it is believed by many Americans that the League of Nations was the subtle suggestion of British Statesmanship, whereby the great Empire would effectually dominate the destinies of civilisation. Thoughtful Americans, however, recognise that the blunder of attempting to create a League of Nations at a time when the imperative need of the world was practical reconstruction on economic lines, was primarily the error of American Peace representatives, who first induced Great Britain and then virtually forced France to accept that which the clear sanity of French Statesmanship was disposed to reject as both illusory and inopportune. . . ."

“ It is not so generally appreciated in America, even among thoughtful men, that the multiplied vote of the British Empire was not desired by England so much as by its great and virtually independent Overseas Dominions. Few Americans realise that this recognition of Canada and Australia as separate international entities is, in fact, an injury to the centralised power of England in the control of international relations of a world-wide Empire.

“ There can be no doubt that while at the Armistice the United States were in favour of some form of League and international co-operation, but they did not propose to commit themselves in advance to a League with which they would have no sympathy, and which would impose obligations which the American people did not desire to assume.

“ Upon these issues the American people, by an overwhelming majority exceeding one million votes, refused to grant the President an unlimited authority.

“ Let us suppose that England had a rigid, written Constitution, which limited the power of its Government by providing that neither the Prime Minister nor the King, in whose name the Prime Minister acts, could make a Treaty unless two-thirds of the House of Commons concurred in its wisdom. With this limitation of authority, let us suppose that Mr. Lloyd George had dissolved Parliament before the Peace Conference met, and had appealed to the English electorate to give him a mandate to negotiate a Treaty of Peace with the League of Nations as an integral part thereof, and that on this issue the English people had elected a House of Commons in opposition to the Prime Minister by overwhelming majorities. In such an event Lloyd George would have resigned. Let us suppose that he had a fixed tenure of power, like the President

of the United States, and had thereupon announced that he intended to proceed in person to Paris to negotiate a Treaty upon the principles as to which he had vainly appealed to the Electorate for a vote of confidence.

“Let us further suppose that under these circumstances Mr. Lloyd George had gone to Paris in opposition to general public sentiment, irrespective of party, and had negotiated the Treaty with the objectionable provision, and that during the progress of the negotiations more than one-third of the new House of Commons had signed a formal statement that they would not accept the proposed League of Nations in the form negotiated by the Prime Minister. Let us imagine that Mr. Lloyd George proceeded to negotiate the Treaty with the objectionable features, and then submitted it to the House of Commons. Can anyone question that an English House of Commons, as always jealous of the maintenance of its constitutional institutions, would reject a treaty, an integral part of which had been negotiated in open defiance to its wishes.”

That the tacking of the Covenant on to the Peace Treaty in order to ensure its passing was one of the greatest blunders of modern history there is little doubt. First of all, it was coercing an ideal. It revived the principle of “tacking,” long since discarded in our Constitution as illegal and politically dishonest, by which some objectionable measure was tacked on to a Money Bill, the passing of which was automatic. The effect of tacking the Covenant was to weaken both the Peace and the formation of the League. America and others were to be forced to join the League as constituted in order to make peace. The Dominions were allowed to join, as a result of their having signed the Peace. If the League had not been forced



in this manner, America undoubtedly would have supported a strong Peace and assisted in reconstruction. And, as likely as not, the Dominions would not have joined the League as separate nations at all, for with a good strong Peace effected, the question of the formation of a League of Nations would have been submitted to them for democratic consideration, and they would have realised what they do now.

It is no part of my intention in these articles to attack the League as such. In fact, before the War, after considerable legal and diplomatic research in British, American and European literature, and some contact with international politics, I recognised, as did many others, that political opinions of the nations were converging rapidly toward this end, and that it was the ultimate hope for harmony in the world.

One regrets that a more auspicious start was not made. A Society of Nations is no mere philanthropic notion ; it is a realisable ideal justified by a practical necessity. But it was launched by coercion and delusion. And we have allowed the impression to grow that it has been exploited by "policies." The question of mandates illustrates this.

Thus, recently in the House of Lords, the question of the terms of a Mandate arose over the matter of expenditure in administering the Mandate for Mesopotamia. Lord Islington protested that, as Parliament was responsible to the people for its grants of supply which have to be met by taxation, Parliament should have a constitutional right to examine and approve the terms of the Mandate. Lord Curzon, on behalf of the Government, replied that discussion was undesirable before the accepted Mandate had been received by the League. But if prior discussion is un-

warrantable, how much more so would discussion be after the League had set its seal to the Mandate. Referring to this interference with a constitutional privilege in deference to the League, Lord Islington said: "Much as we may regret the absence of America's participation in the League one is driven to recognise by the present attitude of the Executive in this matter that America's apprehensions are not without justification." It is true that the Secretary-General of the League has since definitely stated that the terms and conditions of the Mandates are not drawn up by the League, but by the Mandatory States, and that there is no reason why both the condition of the Mandate and the Mandate itself should not be submitted to the Parliament concerned before acceptance. Nevertheless, this is a good example of the exploitation of the League to further the ends of Party government and executive action.

To requote from Mr. Beck's article: "Fortunately, even the folly of the League of Nations cannot destroy the strong foundation upon which the Anglo-Franco-American Entente now rests. That foundation consists not only of kindred interests and ideals which will inevitably make for co-operation, but upon the powerful, though sentimental, fact of the comradeship of arms; it is cemented by the blood of those who fell in battle and now sleep in France. No temporary differences or passing irritation can destroy the sacred blood-comradeship of the Great Alliance."

These are weighty words, and specially apt just now that America has consented not to stand altogether aloof from the world problem. The League separates her from us. What is our difference? Nowhere does the path followed by the United States cross ours. Our complaint is rather that she refuses to wander, but where our policies

*do* touch—in the Pacific—her policy agrees with those of Australia, New Zealand and Canada. Sooner or later this must come—the one Society to which, with other nations, all we English-speaking peoples shall belong. To effect this offers the greatest opportunity for diplomacy in our time. This will be the deciding factor in bringing Peace to the world. What is there of such consequence that it should stand in the way of this? Rather let us start a new League.

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### **Deductions.**

So much for the responsibilities incurred by membership of the League. Let us now consider the consequences within the Empire of this assumption of Statehood.

(1) If the Dominions are separate States, they must accept responsibility for the making of war and peace, unsupported by other Dominions or Great Britain, and of course responsibility for their own defence.

(2) Their relation to the rest of the Empire can only be one of alliance. The unity of Empire will be over.

These two logical consequences, to mention no other, are the last thing the Dominions want. If, however, the Dominions have not full Statehood, but are part of the State, the British Empire, such State must be either an Imperial State, where the Government of one part of the State is at the same time the Government of the rest, or else a Confederacy, that is to say a group of States more or less equal, contributing to a Central Government in which they all participate. As we have said, the Empire is passing from an Imperial State on its way to becoming a Confederacy. That is in the future, and a good way off yet.

## CHAPTER VI.

### REQUIREMENT (1) OF EMPIRE (2) OF DOMINIONS.

#### 1. Requirement of Empire.

But whether an Imperial State or Confederacy, the State is the British Empire. Of this there can be no doubt. And whether we call the Dominions States or Nations, it does not matter so long as we realise they are not Independent States but are still by their own wish a part of the State, the British Empire. As such it follows as conditions of Empire :—

(1) They cannot speak with a separate voice in International Councils, but in foreign policy can only *contribute* to the decision of the central voice and accept its decision, exceptions to its operation being made if necessary.

(2) They cannot remain neutral in war. What degree of active support they give is another question, but a foreign State would not exempt them from attack and could not be expected to respect such fictitious neutrality.

This simple fact is not always understood either by writers or statesmen or the Press.

Thus Mr. Duncan Hall, in referring to prospective treaties made by the Empire with a possible dissentient, writes: "It is *probable* that if such a war occurred the dissenting member would legally be involved in it." (Italics are mine.)

Again, "the Dominion Governments have always recognised that a declaration of war by the Imperial Crown would technically involve them in belligerency."

There is no doubt at all that this "technical" involving of the Dominions would have to include capture of ships, bombardment, and possibly conquest and annexation if a successful enemy cared to do so.

Let us quote from Prof. Oppenheim :

"For the purposes of the International Society the British Empire and not the United Kingdom is the unit. If our Government makes a treaty it applies to the whole Empire unless there are in it express words limiting it to one portion only. If we go to war all nations of the Empire are placed in a condition of hostility. The quarrel may be purely English or purely Canadian or purely Australian, but the enemy would be free to strike any part of our world-wide dominions. Australia, Canada and South Africa might (I do not think they would) say to us, 'This is no concern of ours. We cannot help you.' But if they did, they could not claim to be neutral and therefore free from attack from the enemy, and we may be sure, if an enemy saw a chance of invading their territory or injuring their commerce, he would take it."

And from Dr. Lawrence, in his *Lectures on Colonial Problems*: "When the King, advised by his responsible Ministers, goes to war, all his subjects and all his Dominions are at war. . . . Parts of it can no more remain neutral than parts of my body sit at home if I decide to go for a walk. . . . It may well be that some voice in the shape of the advice to be tendered might, with advantage, be given to the Great Dominions, but when it is tendered

by the proper authorities and acted upon, it affects in matters of peace or war, every part of the King's realm."

(3) If the Dominions send Ambassadors for special ends, these Ambassadors speak either for the Empire as regards these special ends with reference to the Empire, or for the Empire as regards these special ends with reference to the particular Dominion only.

(4) Every State must accept responsibility for its own defence, and each Dominion, as part of a State, must contribute a fair share. What is a fair share is a matter for agreement.

(5) If the Empire is to approximate to a Confederacy, then His Majesty's Ministers of the Dominions can advise the King on any matter either affecting the particular Dominion or on general matters affecting the whole. A decision made on advice of H.M. Ministers must bind all parts of the State, subject, if necessary, to an exemption of dissentients where possible.

## **2. Requirement of Dominions.**

(1) They want to retain unity of Empire. None is capable of self-defence.

(2) They want a voice in foreign policy, war and peace, if they are to contribute to Empire defence.

(3) Co-ordination within the Empire, facility for direct touch with other Dominions and possibly with other countries.

(4) In short, so far as is compatible with unity of Empire, they want the greatest freedom and independence,

*e.g.*, abolition of appeal to Privy Council rather than substitution of Central Court of Appeal.

Although the Dominions are insistent on their larger nationhood as reflected recently in Constitutional practice, they do not want this and other asserted claims to be consummated by a closer union or centralisation of existing authority. They are convinced centralisation means restriction.

This fear of domination by a central executive has led some people to oppose even central co-ordination and to advocate the precipitation by some constitutional document of absolute independence and complete autonomy for the Dominions. It has led to exploitation of a totally groundless fear that we, the Oversea Dominions, are being cajoled into this, an imaginary, central domination through forward commitment of closer union by the United Kingdom assisted apparently by the Empire delegates themselves. **Any such intention has frequently been disclaimed and disproved both by the British and Dominion Governments and every possible assurance given that not only will proposals be subject to Dominion ratification, but that constitutional suggestions must first come from the Dominions themselves. In view of this to continue to reiterate this danger is to thrash a dead mule. It has been certified dead by the British and Dominion Governments and it is time it was buried.**

To those well-travelled in the Empire and watchful of the trend of Dominion opinion it appears that this occupation of continuing to "thrash the dead mule" can only be explained in that it offers opportunity for a suitable gesture to enthusiasts who are trying to make public opinion in the Dominions believe it wants something very near

absolute and immediate independence set up by a document. Fortunately the eyes of the democracies in the Empire are being opened to the dangers involved, and their purity of political vision can be relied on to save them from attempting to gulp the camel rather than to strain at the gnat. They have derived experience from the Covenant of the League. The recent reaction from ideas seemingly separatist but never representative overseas, as evidenced by extracts of Dominion opinion in a previous chapter, supports this fact. In quoting political opinions it is as well to remember that the trend of public opinion is as important as the opinion itself.

While with other students of this great problem I am grateful to Mr. Hall for his industrious book I do not consider his writings free from the above objections, although his sincerity and frankness excuse a good deal, and greater maturity of consideration would probably result in more measured statement. He must not forget that a referendum on the secession issue to which he refers so frequently and which is the last thing the Dominions want, would decide for Empire as least as certainly as it did recently in South Africa.

Thus, speaking of devolving the powers of the Imperial Crown on the respective Governors of the Dominions, Mr. Hall admits this would involve "formal disruption of the Empire into a number of sovereign States which would be separate Units in International Law" and says that "although opinion throughout the Empire is strongly opposed to a solution along these lines, there is something to be said for it." (*Brit. Comm. of Nations*, p. 244.) On the contrary, if this is so and if it "runs counter to the deep-rooted feelings of the self-governing Dominions that the formal unit of the Empire is worth preserving," there is



nothing to be said for it at all. Mr. Hall appears to forget that the deep-rooted feeling of the Dominions goes a good deal deeper than feeling "this unity is worth preserving." It is for something not very different that we mingled our blood on battlefields around the world.

The following further illustrates my point.

**"But this desire (writes Mr. Hall) to remain within the British Commonwealth is based on certain conditions. The primary condition is that the Empire shall be reorganised as an association of autonomous States, equal in status though not necessarily in stature. The second condition, which flows from the first, is that the free Cabinet conference shall still remain the basis of the governmental machinery of the British Commonwealth, and that no attempt shall be made to force upon the Dominions any development in the direction of a super-State with coercive powers."** (*Times, June 11th, 1921.*)

There is no question of forcing anyone. There is no question of secession. In New Zealand there would scarcely be a vote for it. Supposing, because New Zealand or Australia, through a disagreement on contribution for defence, cut adrift, New Zealand would have immediately to arm itself "to the teeth," as a local publication put it, to meet single-handed the possibility of attack. Foreign policy must keep inside the margin of armed power. Writers suggest that these Dominions, dissatisfied with an inadequate voice in their foreign policy, might cut adrift, defenceless as they are, in order to attain it. But if they cut adrift their naval and military budget would have to be ten times as great the first year. Their love for the Motherland does not blind them to the fact that this contribution for Empire defence must be one-

hundredfold out-proportioned by the magnitude of the responsibilities consequent on the secession. Nor is there any one privilege which, if they can suggest the machinery for it, is not theirs for the asking.

“The time is ripe,” proceeds Mr. Hall (p. 236), “for a formal, general, and authoritative declaration of constitutional right by the one body which can satisfactorily make it, namely, a special constituent Imperial Conference.” “Such a general declaration would include declarations of legislative, executive and judicial equality and independence.” “Equality of nationhood must be conceded without reservation in respect of foreign affairs as in all other matters. Equality in respect of foreign affairs means that full recognition must be given to the constitutional right of the Dominions to establish their own foreign offices and to enter into diplomatic relations with foreign Powers, both receiving and accrediting diplomatic representatives. It means also that the Dominions must be conceded a position of absolute equality with the United Kingdom in respect of the concluding of treaties of war and peace.”

All this is highly anticipatory. It is doing exactly what we are told the Dominions do not want. It involves enormous responsibilities of which the Dominions are neither capable nor covetous. It ignores International Law.

Mr. Hall continues, “The piers of a stable supernational authority must be firmly consolidated national units, so consolidated that they can merge themselves in a wider grouping without fear of weakening their hardly-won cohesion. Neither **the Dominions as a whole, nor Labour in the Dominions and in the United Kingdom, believe that any nation in the British Commonwealth is as yet sufficiently**

consolidated, politically and socially, to make the building of a super-national authority a wise and practicable thing."

Quite possibly so! But if the Dominions are not strong enough to stand in combination propped up by Imperial support, how much less are they able to stand alone as practically autonomous States with international responsibilities? "The Dominions as a whole" and "Labour in the Dominions and in the United Kingdom" might probably admit this also!

The Round Table School have ably subjected this alleged Statehood to practical tests and found it wanting. Their arguments are for the most part penetrating and correct. They have been led to conclusions diametrically opposed to the Separationists, and the only criticism I have to offer against their invaluable contribution to this problem is that they have ended up with a too definite Imperialism. That is all.

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#### Lord Sandon's Scheme.

This short survey would not be complete without reference to a suggestive and valuable article by Lord Sandon in the *Nineteenth Century* (October, 1920).

While recognising the ultimate possibility of the League of Nations for removing causes of distrust and precipitate action, Lord Sandon sees the possibility of a more immediate and "permanent influence for good on international affairs in a League of British Nations with one interest and common purpose than in the many different races and characters comprising the League of Nations. On the biggest issues of world importance the Empire must be one."

In considering how this Empire decision can be obtained, Lord Sandon rejects an Imperial Parliament as unfeasible, but advocates an Imperial Executive consisting of 13 members (including one European and one Indian from India) nominated locally, and to be presided over by an Imperial Prime Minister "preferably selected by the King," a quorum for a decision existing whenever one member at least from each Dominion was present. Prime Ministers of each Dominion would be ex-officio members, to attend whenever possible, but with no voting power. This Executive body, says Lord Sandon, would have entire control of three vital departments of State: Foreign Affairs, Defence, India.

The scheme Lord Sandon follows out with consummate ability and a careful eye to the changes it would involve in official machinery of Empire. He suggests that in place of Governors-General there should be appointed Regents, each the Constitutional head of his Dominion with the same status, powers and functions as the present King on all matters within the prerogative of the Dominion Government concerned. Lord Sandon eloquently states that "the sole tie that binds the Overseas Dominions to the Old Country is the person of the King." And he points out the great advantage that would undoubtedly accrue if the Royal Princes of His Majesty could be appointed to fill these posts. In this way the Prince of Wales would be "Regent of the United Kingdom," and His Majesty "Emperor of India and King over all the Empire."

It is quite true that we find our relationship as members of this Empire in the person of His Majesty, who is the personification of the Sovereign and the symbol of Empire. Nor is there any doubt of the overwhelming devotion and

enthusiasm the Dominions would show if such a consummation could be effected.

In fact the whole of Lord Sandon's article is rich with suggestions of fruitful possibilities. His scheme nevertheless is open to the criticism of being anticipatory and involving too abrupt a change against which there is a good deal of registered objection from the Dominions. As Mr. Hughes said, we must wait until public opinion in the Dominions has become more educated to the privileges and responsibilities of Empire.

There would be difficulties. Thus, the Foreign Office would be placed under an executive responsible to no single Legislature, but under a body the opinions of which might conceivably alter from day to day. The Chairman of this executive might be a Dominion Prime Minister, which would mean that the United Kingdom, on whom the responsibility has rested and to a large extent still must rest, would be out-voted by six to one. When we consider the intricate nature of foreign relations and the experience, knowledge and equipment required, we cannot but admit that to shift this responsibility from the United Kingdom to such an executive in a night or even a year would be to imperil the Empire.

Difficulties almost as great would arise if the affairs of India were put within the decision of such a composite council where the heavy majority of the Dominion vote would swamp that of India. This difficulty was recently emphasised by Mr. Eastwood in the *Law Quarterly Review*, as follows: "India would not trust herself to such a body. Doubtless, the British Parliament in legal theory possesses to-day a power equally great, but the full force of its legal power is mitigated in practice by those constitutional con-

ventions and understandings which as the British constitution now stands play a far more important part in practice than do rules of positive law ; and, moreover, the relations between India and the Dominions are by no means so satisfactory as the relations between India and the United Kingdom, for India deeply resents the fact that under existing immigration laws her native peoples, British subjects though they be, are in most cases ineligible for entry into Dominion territory."

The same criticism would apply with greater force to any body of representatives from the Dominions and India but excluding representatives from Great Britain.

Sir John Findlay, with a view to consolidating and reinforcing the Dominion point of view, has, I understand, made the interesting suggestion of a Dominion body consisting of Dominion representatives alone, excluding India or Great Britain. While the advantages of this remove any possibilities of the Dominion points of view being overshadowed by that of the United Kingdom it would probably be open to the following criticisms : (1) Lack of contact with the chief point of view of the Empire, absence of a guiding hand, and consequently absence of a considerable factor in effecting compromise and steady debate.

(2) Tendency to separate the important affairs of the Dominions in water-tight compartments distinct from the affairs of Great Britain.

(3) It is doubtful if a Dominion would not prefer to follow the lead of England rather than the lead of another Dominion. And in practice one or the other would sometimes happen.

(4) A duality such as this would entail could never support satisfactory handling of foreign policy. Moreover, in tentative conclusions reached by (A) this Dominion body and (B) the Foreign Office, there would be infinitely more risk than is necessary of such conclusions not having been reached by a survey of the identical ground from a common point of view.

Moreover, it does not allow, as one must allow, for a transition period. In their domain the Dominions have been practically independent, but their domain has not bought them face to face with the realities of international difficulties and responsibilities and dangers. This they will acquire. During this transition period a prerogative consultative and advisory, as indicated in the last chapter, will probably prove all that is necessary for a beginning.

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It is evident from the above extracts that our course lies somewhere between this "absolute Autonomy," the responsibilities of which are just beginning to be realised, and Federalism. Both would involve a violent change. Both equally require the speedy erection of considerable edifices. It is submitted that the method followed by both schools has been incorrect. Assuming that Autonomy, or Federalism as the case may be, would be a good thing for the Dominions, they start to build structures. Their method starts with an assumption. Let us not assume. Let us keep to facts.

First let us subject the new conceptions of Statehood as recently asserted to the tests required by the States of the world, by foreign States, by International law. Let us realise what obligations and changes Statehood as so

tested would involve. Let us remove conflict of thought, confusion and ambiguity which disguise the unreality of the Dominions' Statehood and let us ask what the Dominions want. Let us consider then the essentials indispensable to the British Empire State if it is to remain such, and then, so far as is compatible with these essentials, grant the aspirations of our Dominions. In doing so, let us beware of adding machinery that will dislocate other machinery vital to the State to which the Dominions still wish to belong. Above all, whatever machinery we add, let it be simple, and start slowly. Itself it will indicate necessary evolution and improvement.



## CHAPTER VII.

### PROBLEM FOR SOLUTION.

REPRESENTATION IN FOREIGN POLICY—DIFFICULTIES—  
MATTERS OF EMPIRE—SUGGESTION.

#### **Conclusions from Foregoing.**

(1) From the extract of Empire opinions previously adduced one thing stands out sharp and clear. It is the wish to preserve Unity of Empire. Let us build on this. The League, therefore, must be amended. And whatever their relationship to the League, the claim of the Dominions as separate States with International rights should be abandoned. No responsibility involving them in war should be undertaken except through the British Empire. On this point Sir John Salmond's advice to New Zealand was well taken. Even responsibility for a mandate must be recognised as due first to Empire and then through that medium to the League. The terms of the mandate and its responsibilities should first be fully discussed and approved by the Dominion Parliaments concerned. There are a great many questions hanging on the Dominions' relation to the League. These will be dealt with at another time and in another place. Unless America joins the League it will probably remain weatherbound.

(2) War and Peace can only be made by and with the Empire State as a whole. Foreign States and International Law demand this.

(3) Foreign policy, on which hang war and peace and the question of defence must be decided by the Empire as a whole. Let us disabuse our minds of the idea that part of a State can perform these functions alone. As before stated, if represented in foreign policy, the Dominions will contribute to the defence of Empire.

(4) But in these matters, peace and war, foreign policy and defence, the Dominions want a voice in the decision of the Empire. Apart from this, they do not desire closer union, Federalism or Imperialism. They fear a Central Executive in that it might commit them as has the League. They are averse to delegating a large responsibility to Ministers residing in London, for the same reason. In other words they want the new right of a voice in these great matters, but not at the price of restricting the present degree of freedom. And apart from these matters altogether—the constitution of the Empire should be amended, as it is anachronistic.

In short, in so far as is compatible with the preservation of Statehood and unity of the Empire, they want the greatest amount of freedom possible for their national and domestic affairs. In affairs of Empire decision (war, peace, foreign policy and defence) they want to contribute to the decision. And as regards countless matters which do not concern themselves alone, but other parts of the Empire (outside the four matters) they want every facility for co-operation.

All these are possible, and cannot rightly be withheld. Least of all Great Britain wants to withhold them. If agitators and theorists leave the question alone, problems will answer themselves. That is the history of our Empire.

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Let it at once be recognised that in theory the principle of the British Government in the past has been to grant the Dominions the powers for which they have pressed, provided these powers did not involve difficulties of Empire or threaten to lead to a *déclanchement* of International machinery. This has been so to a degree, in fact—*e.g.*, control of immigration and commercial relationships has been left to the Dominions.

It is important to remember this in suggesting machinery for conferring greater power on the Dominions. In his *Problem of the Commonwealth*, Mr. Curtis adduces these acts of the self-governing Dominions which were disallowed by the British Parliament.

(1) Queensland's annexation of New Guinea to prevent occupation by a foreign Power of the coast adjoining. She could not afford to finance the necessary administration of New Guinea. The difficulty arose of the British Parliament pledging the British taxpayer to pay for this and similar propositions, the British taxpayer's point being that his interests were remote compared with those of Queensland.

(2) In 1883 New Zealand passed a Bill annexing any island in the Pacific not claimed by a foreign Power. The Bill was vetoed by the British Government, as it might have led "to a scramble by foreign States for strategic positions

and involved us in a war against the whole of Europe. These questions in the Pacific were such as could only be considered in conjunction with similar questions awaiting settlement in every Continent but that of America."

(3) In 1910 the Parliament of New Zealand passed a measure which would, in effect, "have excluded from New Zealand ports all ships but those registered in Australia and New Zealand. Such was calculated to provoke retaliation by foreign Powers on Great Britain, who would have had to bear the brunt."

### **Representation in Foreign Policy.**

How is this to be done? War may be forced on us in a moment, in which case the whole Empire would be involved whether or no. Also it may be necessary to declare war immediately without the delay of consulting Dominion Parliaments. Besides war, a good many other matters of foreign policy require instant decision and cannot admit of delay necessary for submission to the Dominion Parliaments. The obvious deduction is that some form of permanent Dominion representation must exist in London. We will consider how in a moment.

Of this foreign policy a good deal can be foreseen and a good many contingencies provided against. As regards all these, they could be discussed by the Dominion Parliaments and their decision conveyed to their representatives in London. Representation need not carry large Ministerial responsibility. It might exist conditionally, *e.g.*, on the understanding that no matter primarily affecting one Dominion binds it unless ratified, and that questions of a certain nature must be submitted to Dominion Parliaments

for debate and so on—and that several questions, *i.e.*, those affecting the Empire, can be decided only by majority vote, provision being made for any dissentient where such a course would be compatible with the preservation of the Statehood of the British Empire, *e.g.*, Japan can make an alliance with the British Empire State only. This must include all the Empire. But each Dominion must vote on the matter. Suppose Australia and New Zealand vote for renewal (as it would save them additional expense for the Pacific Navy) on the condition that the immigration laws of these Dominions are left intact, and supposing Canada voted against any alliance at all. The result would be that the alliance with the immigration condition would have to be made, but Canada could possibly be excepted so far as possible, *e.g.*, from obligation to take any active part in an allied war on behalf of Japan.

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### Difficulties.

So much for the fact of representation as such. How is this to be done and related to the British Parliament? It has been suggested that the Dominions would not concede ministerial power to a Minister resident in London and responsible to a Parliament thousands of miles away. The answer is that some form of representation in London is obviously necessary for the Dominions to remain *au courant* with events and to keep closely in touch with the actual problem. Moreover the problem as presented to the Dominions would be better, if viewed from the standpoint of a Dominion official, than if presented by the British Government. The Minister need not be a Cabinet Minister, but might be an official with ambassadorial powers.

Secondly, many questions would have already been foreseen and decided upon by the Dominion Parliaments, and as a matter of practice it should not be difficult for the resident Minister to have a fairly definite policy outlined for him to follow. And even the British Government often has no great notice of a Cabinet decision. The Dominions would have some voice, whereas at present they have none. If the Dominions are to be represented at all, any representation would be open to this objection of distance, which is an ever diminishing consideration.

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The important thing to remember is that instinct, not rationalism, has erected our structure of Empire. That this instinct has taught us to let things fashion themselves and that we have only to make a commencement for results to follow automatically. It is more important to do little than to do much. But our constitution, as it is, requires amendment. Let us not amend it hastily, but give it the opportunity to amend itself. How can we do this ?

If Foreign Policy were the sole *raison d'être* of Dominion representation in London, Resident Ministers representing each their respective Dominion point of view to the British Secretary of State for Foreign Affairs might be sufficient. But there are many other matters which in the vital interests of the Dominions themselves require joint deliberation by the Dominions together with the Motherland.

### **Matters of Empire.**

Besides Foreign Policy, including as it does questions of War and Peace, there is the great question of Empire Naval and Military Defence. There are the questions of

immigration within the Empire, abolition of appeal to the Privy Council, matters such as British nationality. There are also questions of shipping and the collection of commercial, financial, political and industrial intelligence, which, as Mr. Hall says, "is done nominally for the British Empire, but actually for the United Kingdom alone."

There are cases where this intelligence is primarily essential to a Dominion. This led to the appointment of a Canadian ambassador as an adjunct of the British Embassy at Washington. New Zealand and Australia similarly may want representation there if not in China or Japan. Such representation would have to be subordinate to or in substitution of the British Embassy at the particular place, or otherwise there might be two or more foreign policies at one foreign capital.

Another question that sooner or later will arise is that of the status of a Governor-General himself, whose duties include making a separate report on Dominion affairs to the British Government—ambassadorial powers, in fact, as a *liaison* official between the Dominion and Home Governments.

There seems no great reason why he should not enjoy additional constitutional power so far as the domain of Dominion legislation extended and at the same time continue his ambassadorial function with regard to matters outside. The mooted suggestion of an official to represent the United Kingdom in each Dominion is also probably premature.

The question of status of Governors-General, like that of Dominion ambassadorial representation in foreign countries and in other Dominions, is not a matter to commence with.

They are matters for after consideration, and their decision will be facilitated by indications from the Dominions Council.

In the meantime it is probable that commercial attachés from the Dominions to the British Embassy in any foreign capital necessary would prove a satisfactory commencement and indicate further changes required. This would ensure official commercial contact between the Dominions and the foreign State. The system might lead to greater co-operation and representation among the Dominions themselves.

\* \* \*

Let us start with small beginnings, and commence with the several questions on which all the Dominions agree, some of which might require an adjustment of the general policy of Empire.

\* \* \*

### Suggestion.

A simple Dominions Council in London would clear the air. It might comprise a representative from each Dominion. These, to commence with, need not necessarily be Ministers in the Dominion Government, but might be qualified officials with ambassadorial powers. This Dominions Council ought to be related to the British Parliament by some *liaison* office. This should not be the Prime Minister, whose duties are as head of the British Parliament of Great Britain, and who in any case has more than enough to do. It is suggested that a Secretary of State for the Dominions with a place in the British Cabinet should be added to this Council. This would ensure in general discussion the point of view of the British Government of Great Britain not being overlooked, and



would also be useful in steadying debate. Later on when the Council has assumed more definitely its responsibilities it might be quite distinct, the Secretary of State for the Dominions being replaced by a permanent official whom we will call the Secretary-General, with duties corresponding to a Permanent Under-Secretary of State now. This would ensure official continuity.

Such a Council would involve the removal of the Dominions from the Colonial Office, a change long advocated by the Dominions, who have persistently registered their objection to remaining in the same office as the Crown Colonies.

A suggestion which the Dominions might consider is that their affairs should be removed from the Colonial Office and put directly under the Privy Council. The Dominions Council as above constituted would be presided over by the Lord President of the Council as Secretary of State for the Dominions. For a commencement it might be thought sufficient if the Dominions Council existed in an advisory capacity only, and this would not necessarily require the members of the Dominions Council to be either Ministers of their respective Parliaments or Privy Councillors.

On the other hand the Dominions might prefer their representatives should be responsible to their respective Cabinets as Ministers of the Government, and also to have weight as Privy Councillors.

There are Privy Councillors in the Dominions, although no High Commissioners have held this rank at the time of their appointment.\*

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\* Sir Charles Tupper was created a P.C. after the expiry of his office as High Commissioner.

The Privy Council still symbolises the Unity of Empire as the King's Council of advisors. The Cabinet, an informal committee of the Privy Council, advises the King, not as the Cabinet, but as members of his Privy Council. Only those Privy Councillors who are summoned have the right to advise. In practice the Cabinet alone is summoned. And if the Dominions obtain articulation through the Privy Council, a Convention could establish their right to be summoned too. The Privy Council offers to the Dominions at once a possibility and opportunity for materialising the theory that the Unity of Empire proceeds from the Throne.

In the Dominions the phrase " Privy Council " is often associated with the unpopular final appeal from Dominion Courts. But its dignity and history are well realised. The Dominions have asked for the abolition of this appeal, and seem to indicate that no appeal at all from their Courts would be preferable rather than the institution of any Imperial Court of Appeal. Although a good deal of appeal from Dominion Courts is unnecessary in that these Courts are perfectly competent to give final decision, still in some matters it is probably not inadvisable that some sort of appeal in the Empire should still exist. With the affairs of the Dominions located in the Privy Council, and Dominion Representatives advising as Privy Councillors, a way of solution for this difficulty also should be opened up.

Whether each Dominion Member of Council is a Minister of his Government should be left to each Dominion concerned. If not a Minister, he might be a person specially qualified with ambassadorial powers subject to recall or replacement at the will of the Dominion Parliament and party in power. This for a commencement might be found the more expedient as it would obviate the difficulty of a

Minister being so far from his Parliament, not to mention his electorate. High Commissioners, usually men who have held high office, are not Cabinet Ministers, but as at present constituted their posts carry many duties that require some continuity of office. And it might be found advisable to continue the periodical conferences of Prime Ministers in addition to the Dominions Council. More than one statesman from the Dominions has assured me that such a Member of Council would have to keep closely in touch with and possibly make frequent trips to his Dominion. Possibly this Council need not always sit in London, but meet on occasion in each Dominion. I believe the practical results of this would be excellent. It would carry conviction and consolidation to opinion in the Dominions. It would assist Dominion Ministers to appreciate the difficulties of their sister Dominions. Each in turn would feel the direct result of each decision on local Dominion opinion. In London this is never felt. It is only described in the Press.

Let this suggestion not be called grotesque. New Zealand is less than a month off England and she is farthest off. Parliaments of the Empire do not all rise together. It would be a matter for arrangement and the Headquarters could remain in London.

Such a Council would consolidate the Dominion point of view. It would be free and not biased or outweighed by the British Cabinet, as so many recorded objections have feared. It retains the Unity of Empire. There are several subjects on which it could reach an immediate decision, *e.g.*, Privy Council Appeal, Merchant Shipping Acts and Commerce.

There are other matters in which it could prepare for a decision. It has been said that present facts point to the Pacific as the next storm centre. It is obvious then that the policy of Canada and Australasia either agrees with or conflicts with the policy of America in the Pacific. If it agrees, then the policy must be embodied in our Empire policy, or else, as a logical outcome, the United States will become the foster-mother of these Dominions' policy. Another question in which, although no finality can be reached, a good deal of headway can be made is that of immigration within the Empire—a problem even more difficult than that of the Japanese question. It is recognised that this problem is no longer an affair of the United Kingdom, but one probably best left with the Dominions and India for decision. Progress has already been made, and both the Dominions and India have recognised the principle of reciprocity to some extent. The Dominions have recognised India's right to impose rules restricting the entry of Dominion immigrants similar to rules in the Dominions restricting Indian immigrants. And temporary immigration of Indians for purposes of pleasure, commerce and education is allowed. (See Appendix D.) No subject could be more suitable for handling by such a Dominions Council as outlined above. It would lead to the wider question of Empire and Dominion nationality on which there is much to be done.

\* \* \*

Another great advantage of a Council as above constituted would be that it would diminish rather than magnify a problem of practical government too often ignored—I refer to the special point of view of England. Apart from the

Dominions, the British Parliament is responsible for the Colonies and Dependencies, not to mention India, whose position also is different from that of the Dominions. If we are not to have an Imperial Parliament with Imperial Executive, which the Dominions do not desire, these Dependencies will not want to be controlled or partly controlled by the Dominions. For a time the foreign policy both of these, and even of the Empire, must be mainly controlled by the British Government. To change it suddenly in a night would be to imperil the international position of the State. So far as foreign policy relating to the Dominions is concerned, they can have all the voice they want, and they can contribute to an Empire decision so far as it doesn't. But the above suggestion leaves the British Cabinet intact to carry on for these Dependencies, pending the adoption of greater Imperial changes. It has the cautious aspect which pervades the Constitutional changes of our history. The United Kingdom before the war paid 71 millions a year for the defence of the Empire and the self-governing Dominions about eight. This larger taxation must carry with it larger representation. The above suggestion of a Dominion Council with its permanent connecting links to the British Government would ensure government for the Dominions by the Dominions. This surely would be preferable to any Imperial body, where they would be voting on questions concerning the Dependencies, if not on the domestic issues of Great Britain.

\* \* \*

This brings us to the agenda of the coming Conference. In the Dominion House of Commons (Ottawa, April 25th, 1921) Mr. Meighen announced that it would include as main or additional subjects the following :—

## AN EMPIRE VIEW

1. Preparation for a special Constitutional Conference to be held later.
2. A general review of the main features of foreign relations particularly affecting the Dominions.
3. A renewal of the Anglo-Japanese Alliance.
4. Preliminary consideration, preparatory to the proposed Constitutional Conference, of some methods of arriving at a common understanding regarding external affairs which concern the whole Empire.
5. Inter-Imperial communication by land, sea and air.
6. The position of British Indians in other parts of the Empire.
7. Naval, military, and air defence.
8. The recommendations of the Oversea Settlement Conference recently held in London.
9. The development of civil aviation.
10. Reports from the Imperial Shipping Committee appointed as a result of the Imperial War Conference in 1918.
11. The findings of the Technical Commission appointed to discuss the question of Imperial wireless communications.
12. The question of German reparations, including division between different parts of the Empire of the amounts received.
13. The Imperial Statistical Bureau.
14. Imperial patents.

Since then, however, it has been announced that the Conference will not consider the first subject of this agenda—preparation for a special Constitutional Conference to be held later—no doubt in deference to a good deal of timidity in the Dominions occasioned by reference to regular Imperial Cabinets, Imperial Peace Cabinets, and so on in the Press, notwithstanding steady objection to this term in the Dominions, *e.g.*, *Winnipeg Free Press*, in describing “the *Times* behind the new drive for centralisation” (*Times*’ Own Correspondent, May 10th, 1920).

Nevertheless, from a glance at the nature of the remaining subjects in the agenda it should be self-evident that these questions involve the prior consideration of the Constitutional status of the Dominions which must determine the point of view from which all these matters are to be considered. Moreover, decisions reached in these matters must to a degree determine the Constitutional issue also. But it has been submitted that for the Constitutional Conference a representation of Prime Ministers is totally inadequate and that a fully representative gathering, including representatives from other sections of political opinion and the Opposition, is required. If, then, these matters of the agenda apart from the Constitutional question are considered at this same Conference, it will mean that nevertheless Constitutional precedents must also be *ipso facto* determined—and by a delegation of Prime Ministers instead of by this representative body. Constitutional considerations cannot be avoided, and where they crop up they can hardly be ignored. What then is to be done?

At the outset two principles of the Conference should be officially communicated to the Dominions. (1) That the results of the Conference are subject to ratification by the

Dominion parliaments. (2) That with reference to constitutional difficulties that may arise suggestions must be initiated by the Dominions themselves.

In this way only good can result, and when the Prime Ministers return to their Dominions to give an account of their stewardship their outlooks will have become more valuable by the fact of this reconnaissance.

Looking ahead towards this Constitutional Conference to be held later, a conference that some seem to imagine will be able to inflict on the Dominions the whole paraphernalia of statehood with foreign offices and embassies complete (See *ante*, p. 54), one cannot but have grave doubts as to whether such an imposing conference convened *ad hoc* would be the best way of settling the constitutional problem, especially if left as it now is. Unless some headway is made in focusing the issue and sounding the Dominions beforehand on the points likely to be involved, in other words educating public opinion, I do not think it is. Thoughtful men will admit that a plan for representatives of our diverse Empire to sit around a table and invent their own constitutional machinery in any case requires much consideration. If the constitutional problem is to be precipitated at the Constitutional Conference and not approached until then it will probably mean a good deal of canvassing beforehand and provoke propaganda. It may mean more groundless fears and even an election. And at the best the problem is not likely to be improved in shape in being tossed about in fierce party strife.

A good deal of course depends on the scope and course of such a Constitutional Conference. Some refer to it as a body that will hand out the equipment of several complete statehoods all embodied in a declaration of Constitutional



Right that we should have to live up to. But Constitutions cannot be made or changed in a day for an Empire like ours. The question of Dominion representation is the first thing. With a simple Dominions Council as outlined above we should get in touch with the problem which it will be the duty of the Constitutional Conference to solve. Simple beginnings will indicate desirable changes. It is not altogether untrue that the Dominions fear to be committed beforehand because they do not and cannot yet know what is best for them. Who can? Such a council would help them to know this. There seems no good reason why this or a better suggestion if adopted should not be considered by the Dominion parliaments without waiting for the Constitutional Conference. It would at least help the Dominions to formulate their own proposal with which after adoption by their parliaments they could come to the Constitutional Conference when it is held. Half the trouble and difficulty has been occasioned by our attacking the problem as President Roosevelt shot his first bear, "by aiming at it generally." It creates misunderstandings, cross-purposes, alarms, and, we are told, the likelihood of excursions.

\* \* \*

A good many desires of our Dominion statesmen will undergo a change when, in coming to a decision, they have to consider the practical difficulties. How many foresaw the consequences of their signing the Covenant? But continued responsibility always steadies one. And as a Council they would realise the necessity of occasional compromise. There are matters in which New Zealand and Australia do not wish to go so far as does Canada.

\* \* \*

**“ Lest We Forget ! ”**

Finally, “ Lest we forget ! ” In 70 years or so more than one Dominion will probably approximate the present population of Great Britain. Before that day each Dominion will be self-contained, each self-reliant, each strong for offence and defence, each capable of complete Statehood and Empire. Then we shall have to amend our conception of Confederacy to something approximating alliance. But that time is not yet. The process is still *en route*. By that time the types of individual characteristics will have become accentuated and the distinct nationality of the Australian, the Canadian, the South African, and the New Zealander will have arrived. In the meantime we cannot overtake our Destiny. We can only pursue it.

## APPENDIX A.

**The State.**

A State, according to Sir John Salmond, is a human society organised for the purpose of the administration of justice, the second function of the State being War. This includes both independent and dependent States, the difference being that the latter do, and the former do not, form part of a larger State. Some writers, Sir John goes on to say, deny that a Dependent State is a State at all, but "speaking generally, we may say that any such Division which possesses a separate Legislative, Judicative and Executive, and is thus the organ for the maintenance of peace and justice, is entitled to be recognised as a State. Thus the Commonwealth of Australia is a true State though it forms part of the larger State of the British Empire."

Professor Salmond's argument is "that a part of a rope is still a rope if long enough to constitute itself a rope." Nevertheless, on the other hand, until it is cut off it is not a rope at all. Thus, eight feet of a twenty-foot rope is certainly enough to be called a rope when it is cut off, but it cannot be called a rope while it is still attached. And we have got into the unfortunate habit of considering this undetached rope sometimes as a rope and sometimes as part of a rope. Salmond, however, is careful to show that these Dependent States have internal powers but not external powers of Independent States. International Law takes account of Independent or Sovereign States. It cannot take cognisance of States that are parts of a larger State.

There are a few States which International Law (*i.e.*, Foreign States) will recognise even though they do not exercise all their powers, *i.e.*, foreign relations, which are controlled by another State. They are called Protectorates (*e.g.*, Zanzibar). They, however, do not form part of the protecting State. If the Dominions were cut off, which is the last thing they want, they might be independent, even although it was arranged that Great Britain controlled their foreign policy. But while they are part of the British Empire State, they are not Independent States, nor can they assume the powers and responsibilities of Independent States.

The British Empire as a State with the Dominions forming part of it may be an Imperial State, *i.e.*, a group of States where the government of one of the parts is at the same time "the common government of the whole" or a Confederacy, *i.e.*, a "central government in which all the States participate." As a matter of fact, the British Empire, although legally and constitutionally an Imperial State, would seem to be rapidly on its way to become a Confederacy.

## APPENDIX B.

**The Sovereign.**

The Sovereign is the supreme power of the State, and it is by the will of this supreme power that war is made and justice administered. Let us clear our minds of the illusion that the Sovereign is an abstraction. It is not. Sovereignty, on the other hand, the quality of being a Sovereign, is an abstraction. But the Sovereign is an actuality—the combination of forces which from time to time amounts to the supreme power of the State. It is a centre, a centre of political gravity, not always static, but on the move like a centre of energy. It is because this centre of political gravity varies that it is necessary that some definite and available body or bodies should exist for the direct expression and carrying out of the will of the Supreme Power. In our State these organs are the King and the Parliaments, the Judicatures, His Majesty's Armies and Navies, and so on. For many years these organs of the Sovereign were thought to be the Sovereign itself, and a good deal of this misapprehension which exists both in Great Britain and in the Dominions has been largely responsible for the tangled statements about the Constitution of the Empire to-day. Thus, Austin thought the Sovereign was the King in Parliament (that is to say, with Parliament) which he amended to the King and Lords and Electors when the House was dissolved, and therefore, supposing there was a Long Parliament capable of extending itself indefinitely, Austin would no doubt have held that the King in Parliament was the permanent Sovereign. But the King

in Parliament is the legislative organ of the Sovereign, because, and only so long as, it reflects the will of the supreme power in the State.

Likewise the Czar being an absolute monarch was thought to be Sovereign, as was the President with the Senate and Congress, and when these disappeared, jurists were greatly perturbed at the disappearance of the Sovereign, but these were only the organs of the Sovereign, and that Sovereign is continuous while there is a State. It is above its organs, and remains even when they undergo a change.

There are times when the organs of the Sovereign are apparently divided against themselves—when a Cromwell without a Divine Right opposes a King Charles with it. But even here the Sovereign has not ceased to exist, nor is it correct to say the Sovereign is suspended, but rather that it still is somewhere, and the struggle is merely the alteration in its centre of gravity. And if this is not so there is no State at all, but a cessation of sovereignty and Statehood at once.

Lord Bryce tried to solve this by divorcing law from fact. He says Hobbs confuses these two and says Austin's definition of sovereignty belongs to the *de facto* sphere, but not to that of *de jure* sovereignty. He says sovereignty is a *de facto* conception. But it is the supreme will of the State, therefore it is both.

I have tried to show elsewhere that this distinction between law and fact can on occasion be a perverse and harmful one, a breeder of friction and conflict. We are now told by certain writers that although the Dominions are States *de jure* they are not *de facto*; that although legally they have one character, Constitutionally they may

have another, and "that a declaration of Constitutional Right can explain their position in Law."

This will not help us much, as an organ of the Sovereign is both *de jure* and *de facto*, until another so-called *de facto* representation of the supreme will of the State displaces it. Until then the so-called *de jure* organ of the Sovereign exists both in law and fact. What is meant is, that the law of the Constitution has been superseded by constitutional practice, which itself is *ipso facto* constitutional law.

## APPENDIX C.

**Law of the Constitution.**

Prof. Dicey says : " Constitutional Law as the term is used in England appears to include all rules which directly or indirectly affect the distribution of the exercise of the Sovereign-power in the State. Hence it includes (among other things) all rules which define the members of the Sovereign-power, all rules which regulate the relation of such members to each other or which determine the mode in which the Sovereign-power or the members thereof exercise their authority."

According to Lord Bryce and Sir John Salmond and other writers, Constitutional Law determines the constitution of the State.

However, this determination is only from moment to moment. It is other than a permanent determination. Writers who speak of fixed or unfixed constitutions are only relatively correct, for no Constitution is fixed against the will of a future Sovereign to alter it. The Constitution of U.S.A. is written and apparently fixed, but this Constitution exists not because it is the same as the original Constitution, but because at any particular minute it represents the wish of the Sovereign of the moment. And so soon as the Sovereign wishes to change the Constitution it does so. A Constitution which does not bend to this wish of the supreme power must sooner or later break.

And the wish of the Sovereign is reflected as much by actual practice of the organs of the Sovereign as by the



written rules. It is not the Sovereign that is bound by Constitutional Law but the organs of the Sovereign.

Thus Constitutional Law is different from State Law (the ordinary law of the land), in that while the latter is written law as supplemented by practice, *i.e.*, custom (*e.g.*, trade usage), Constitutional Law is the written law of the Constitution as amended or superseded by practice.

The position of the Dominions as set out by Sir John Findlay in his interesting book, *The Imperial Conference of 1911 from Within*, is really their position according to the written law of the Constitution.

Thus Sir John Findlay writes :—

“ Notwithstanding every grant of local autonomy Britain has made to her Dominions and Colonies, it is her Parliament alone that has Sovereign-power over them and over all who reside in them. The British Parliament could, by legislation, directly limit, alter or destroy the rights of the people in the self-governing Dominions. It can, if and when it pleases, make any statute it passes operate in the Oversea Dominions, and override any law there inconsistent with its provisions. Not only could statutes which had passed through the Houses of Parliament in any of the Dominions be prevented from becoming law by a mere alteration by the Imperial authorities of the Governor's instructions, but the British Parliament could itself revoke any powers of self-government it granted a Dominion or Colony.”

But to discover the law of the Constitution we must amend this by a consideration of actual practice, which, with the written law of the Constitution, is equally revocable by either subsequent written Constitutional Law or subsequent Constitutional practice.

## APPENDIX D.

**India and the Dominions.**

At the 15th meeting of the Imperial Conference held on July 24th, 1918, reciprocity between India and the Dominions was discussed and, in pursuance of a resolution that effect should now be given to last year's acceptance of the principle of reciprocity, the Conference agreed as follows :—

(1) It is an inherent function of the Governments of the several communities of the British Commonwealth, including India, that each should enjoy complete control over the composition of its own population by means of restriction on immigration from any other communities.

(2) British citizens domiciled in any British country, including India, should be admitted into any other British country for visits for the purpose of pleasure or commerce, including temporary residence for the purpose of education. The conditions of such visits should be regulated as follows :—

(A) The right of the Government of India is recognised to enact laws which shall have the effect of subjecting British citizens domiciled in any other British country to the same conditions in visiting India as those imposed on Indians desiring to visit such country.

(B) Such right of visit or temporary residence shall in each individual case be embodied in a passport.

(c) Such right shall not extend to a visit or temporary residence for labour purposes or to permanent settlement.

(3) Indians already permanently domiciled in other British countries should be allowed to bring in their wives and minor children on condition :—

(A) That not more than one wife and her children shall be admitted for each such Indian.

(B) That each individual so admitted shall be certified by the Government of India as being the lawful wife or child of such Indian.

(4) The Conference recommends the other questions covered by the memoranda presented this year to the Conference by the representatives of India, in so far as they are not dealt with in the foregoing paragraphs, to the various Governments concerned, with a view to early consideration.

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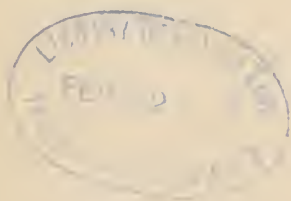
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